127-668

127-668

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 881.

EMMA C. D. NICKERSON, APPELLANT,

vs.

AZOR H. NICKERSON, WILLIAM B. MATTHEWS AND LENA D. CARTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 21, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 881.

EMMA C. D. NICKERSON, APPELLANT,

vs.

AZOR H. NICKERSON, WILLIAM B. MATTHEWS AND LENA D. CARTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	*a*	1
Certificate to record	*b*	1
Original bill of complaint	1	2
Exhibit A—Deed of George Hartness to A. H. Nickerson, May 24, 1870	31	13
B—Deed of A. H. Nickerson *et ux.* to P. W. Gillette, September 19, 1870	33	14
C—Deed of A. H. Nickerson *et ux.* to H. R. Kincaid, September 19, 1870	34	14
D—Deed of A. H. Nickerson *et ux.* to J. B. Underwood, September 17, 1870	36	15
E—Deed of James Miner *et ux.* to Walker and Nickerson, October 10, 1870	37	16
F—Deed of Lewis M. Starr *et ux.* to Walker and Nickerson, October 29, 1870	38	17
G—Deed of C. Bills, sheriff, &c., to Walker and Nickerson, November 2, 1867	40	18
H—Deed of Henry Weber to Walker and Nickerson, November 4, 1871	42	19
I—Decree in case of Nickerson *vs.* Walker's heirs, March 26, 1874	44	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 26, 1887.

	Original.	Print.
Exhibit J—Decree in case of Nickerson *vs.* Walker's heirs, June 20, 1878	44	20
K—Decree in case of Nickerson *vs.* Walker's heirs, October 30, 1878	45	21
L—Deed of A. H. Nickerson *et ux.* to Margaretta Marshall, November 9, 1881	45	21
M—Deed of A. H. Nickerson *et ux.* to Aaron Meier, November 17, 1881	48	22
N—Deed of A. H. Nickerson *et ux.* to Margaretta Marshall, December 22, 1881	50	24
Subpœna	53	25
Answer of A. H. Nickerson	54	26
Lena D. Carter	84	38
Exhibit L. D. C. No. 1—Decree of divorce in Nickerson *vs.* Nickerson	107	47
No 2—Certificate of marriage of A. H. Nickerson to Lena D. Carter	109	47
No 3—Deed of A. H. Nickerson to Lena Carter Nickerson, May 31, 1883	110	48
Exceptions to answer of A. H. Nickerson	111	48
Lena D. Carter	112	49
Amended answer of Lena D. Carter	114	49
Order to file amended answer of Lena D. Carter	120	52
Answer of Wm. B. Matthews	121	52
Exceptions to answer of Wm. B. Matthews	142	61
Order overruling exceptions	144	61
Amended answer of Wm. B. Matthews	145	62
Order to file amended answer of Wm. B. Matthews	151	64
Amended answer of A. H. Nickerson	152	64
Order to file amended answer of A. H. Nickerson	158	67
Replication to answers	159	67
Motion for security for costs	159	67
Affidavit of Wm. B. Matthews	160	68
Order for security for costs	163	69
Exceptions to interrogatories to complainant	164	69
A. H. Nickerson	166	70
Celia D. Kenney	167	71
Exceptions to cross-interrogatories	169	72
Orders for commission to take testimony	170	73
Deposition of Azor H. Nickerson, filed May 5, 1885	173	73
Exhibit Nickerson No. 1—Letter of A. H. Nickerson to J. C. Derby, June 5, 1883	186	79
Interrogatories to A. H. Nickerson	187	79
Cross-interrogatories to A. H. Nickerson	195	82
Deposition of A. H. Nickerson, filed October 17, 1885	205	86
Interrogatories	205	86
Cross-interrogatories	226	93
Exhibit A—Envelope addressed Mrs. A. H. Nickerson, Cobb's Island, Virginia	232	95
Exhibit B—Letter of Jas. T. White to "My dear Emma," August 19, 1879	233	96
Answers to interrogatories	235	96
Answers to cross-interrogatories	254	102

	Original.	Print.
Depositions of Mrs. Celia D. Kenny and Emma C. D. Nickerson	263	106
Interrogatories to Mrs. Kenny	263	106
Cross-interrogatories to Mrs. Kenny	268	107
Interrogatories to Mrs. Nickerson	274	110
Cross-interrogatories to Mrs. Nickerson	284	113
Answers to interrogatories by Mrs. Kenny	299	117
Answers to cross-interrogatories by Mrs. Kenny	320	124
Answers to interrogatories by Mrs. Nickerson	327	126
Answers to cross-interrogatories by Mrs. Nickerson	345	133
Exhibit E. C. D. N. No. 8—Extract from letter from Mrs. Nickerson to her mother, with postscript by Maj. Nickerson	355	136
No. 10—Letter from Maj. Nickerson to his wife, July 24, 1880	356	136
No. 11—Letter from Maj. Nickerson to his wife, July 29, 1880	358	138
No. 14—Letter from Maj. Nickerson to his wife, August 24, 25, and 26, 1880	359	138
No. 15—Letter from Maj. Nickerson to his wife, September 9, 1880	363	139
No. 16—Letter from Maj. Nickerson to his wife, September 14, 1880	364	140
No. 18—Letter from Maj. Nickerson to his wife, September 25, 1880	368	141
No. 19—Letter from Maj. Nickerson to his wife, October 9, 1880	370	142
No. 22—Letter from Maj. Nickerson to his wife, November 6, 1880	373	143
No. 23—Letter from Maj. Nickerson to his wife, November 18, 1881 (?)	376	144
No. 24—Letter from Maj. Nickerson to his wife, November 28, 1880	377	145
No. 25—Letter from Maj. Nickerson to his wife, December 6, 1880	380	146
No. 28—Letter from Maj. Nickerson to his wife, April 6, 1881	383	147
No. 30—Letter from Maj. Nickerson to his wife, June [illegible], 1881	384	147
No. 32—Letter from Maj. Nickerson to his wife, November 9, 1881	387	149
No. 33—Letter from Maj. Nickerson to his wife, November 7, 1881	388	149
No. 35—Letter from Maj. Nickerson to his wife, February 3, 1882	390	150
No. 39—Letter from Maj. Nickerson to his wife, April 27, 1882	391	150
No. 40—Letter from Maj. Nickerson to his wife, May 31, 1882	393	151
Deposition of Lena Diller Carter for defendants	395	151
Deposition of Wm. B. Matthews for defendants	425	165
Exhibits offered	464	183
Exhibit W. H. S. No. 1—Deed from Alfred C. Girard *et ux.* to James E. Fitch *et al.*, March 6, 1879	466	183

1 *Original Bill of Complaint. Filed May* 31, 1884.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, & LENA D. Carter, Sometimes Called Lena C. Nickerson, Defendants. } Equity No. 9027.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant complains as follows:

1. That she is a resident of the city of Washington, in the District aforesaid, and that the said respondents, William B. Matthews and Lena D. Carter, are also residents of said city, and that the said respondent, Azor H. Nickerson, was, until some time in the latter part of the month of May or early in June, A. D. 1883, also a resident of said city of Washington, but since that time he has been, as this complainant is informed and believes and so charges, a fugitive from justice, and is now residing somewhere in the Dominion of Canada.

2 2. That this complainant was married to the respondent, Azor H. Nickerson, on the 13th day of August, A. D. 1870, in the city of San Francisco, in the State of California, by the Reverend T. M. Cuningham, and has been since that time and is now the lawful wife of the said respondent, Azor H. Nickerson.

3. That while on a visit to the city of Portland, in the State of Oregon, in the spring of the year 1870, this complainant became engaged to be married to the said respondent, Azor H. Nickerson, and while so engaged, but prior to the performance of the marriage ceremony, the respondent, A. H. Nickerson, went with complainant and pointed out to this complainant certain lots of ground, of which said respondent said he was the owner, situated in said city of Portland, the same being, as this complainant is informed and believes and so charges, all of blocks numbered one hundred and forty-five (145) and one hundred and forty-six (146), in Couch's addition to said city of Portland, which said blocks of ground the said respondent, Azor H. Nickerson, promised and agreed with this complainant to convey to her, said complainant, after her said marriage to said respondent, Azor H. Nickerson, as a marriage

3 portion or settlement, for the benefit of herself and her children, should any be born of said marriage; and that he would erect thereon a suitable dwelling-house for a home for herself and children, or that, if she should so elect, they would sell said two blocks of land and reinvest the proceeds arising therefrom in other lots in said city of Portland which complainant might think would advance more rapidly in value, and that said reinvestment should be sacredly held upon the trusts as heretofore stated, and that when the said reinvestment should be disposed of, after having advanced

to a value sufficient to pay for such a home, the proceeds thereof should be applied exclusively to the purchase of such home; that after the said engagement of matrimony was entered into between this complainant and the said respondent, Azor H. Nickerson, as aforesaid, this complainant informed her mother, now Mrs. Celia D. Kenney, of her said engagement, her said mother being then and now a citizen of San Francisco; that as soon as her said mother learned of said engagement she wrote from San Francisco to Portland to this complainant and her aunt, Mrs. Trevett, objecting to said engagement and refusing her consent to the said
4 marriage; that upon receiving no satisfactory replies to her said letters her said mother visited Portland for the express purpose of breaking off said engagement and preventing said marriage; that after her said mother arrived in Portland, and before she had conversed with this complainant upon the subject of her said engagement, the said respondent, Azor H. Nickerson, called with a buggy and requested her said mother to take a ride with him; that her said mother consented and, as this complainant is informed and believes and so charges, upon and during said ride the said respondent, Azor H. Nickerson, upon being informed that her said mother's objection to said marriage arose from the fact of his being an army officer and as such having no settled place of abode and no means of support beyond his pay as such officer, the respondent, Azor H. Nickerson, informed her said mother that that question had been under consideration between himself and her daughter, this complainant, and was well understood by them; that he was the owner of certain blocks of ground in the said city of Portland, and that he had promised and agreed with this complainant that if she would marry him he would immediately after marriage convey the said blocks of ground to this com-
5 plainant as a marriage settlement or would hold them as trustee for her separate benefit, and if they were at any time sold the proceeds should be invested in other property, to be held in like manner for her separate benefit; and that when said blocks of ground, or any other lots purchased in lieu thereof, should be finally sold the proceeds arising therefrom should be invested in the name of and for the sole and separate benefit of this complainant and her children; that upon the strength of these promises and representations and relying upon the good faith of the said respondent, Azor H. Nickerson, and in consideration thereof and for no other reasons or considerations whatever, her said mother withdrew her said objections and consented to the said marriage, which said marriage without said consent would not have taken place; that this complainant, relying upon the love and affection of her said husband, the respondent, Azor H. Nickerson, and having confidence in his good faith in keeping and performing his said agreement with her, and preferring that the said property should be managed by said respondent, Azor H. Nickerson, without the complications necessarily arising from the interposition of third parties, did not require that the
6 said lots should be conveyed to trustees for her benefit, but permitted the title to remain in the said respondent, Azor

H. Nickerson, subject to her equitable interests under said agreement.

4. That, in pursuance of the said agreement and understanding as to change of investment, this complainant avers that on the 17th and 19th days of September, A. D. 1870, about a month only after said marriage, the said blocks of ground numbered 145 and 146, were sold by the said respondent, Azor H. Nickerson, and this complainant, and in October and November following the proceeds thereof were invested jointly with one John S. Walker in lots three, four, five, six, seven, and eight (3, 4, 5, 6, & 8), in block twenty-four (24), in Couch'- addition to the said city of Portland; that upon proceedings duly instituted in the proper court having jurisdiction thereof, the said last-mentioned lots were divided between the respondent, Azor H. Nickerson, and the heirs of the said John E. Walker, and lots seven (7) and eight (8) and the north half of lot six (6), in said block twenty-four (24), on the 20th day of June and on the 30th day of October, 1878, were allotted to the said respondent, Azor H. Nickerson, who held them under the original deeds there-
7 for and the said allotment by decree of the court for the sole and separate benefit of this complainant, and as her trustee under the agreement, promise, and consideration, as set forth in the preceding paragraph of this bill, as by reference to said deeds, true copies of which, together with the decree of the court, are hereto attached and marked A, B, C, D, E, F, G, H, I, J, & K, and prayed to be taken and read as a part of this bill.

5. That while the complainant was temporarily residing in the city of Dresden, in the Kingdom of Saxony, as is hereinafter more particularly set forth, the said respondent, Azor H. Nickerson, sold the hereinbefore-described lots of ground in Portland and forwarded to this complainant deeds for the same, to be executed by her; that this complainant, still relying upon the love and affection of her said husband and upon his good faith in keeping his said agreement with her, and having every confidence in him, and perceiving from the consideration mentioned in said deeds (which aggregated the sum of twelve thousand dollars) that the said lots had sufficiently advanced in value to accomplish the object for which the said lots had been purchased, and to carry out the provisions of the trust herein-
inbefore set forth, and being deceived by the tenor of the letters
8 received from the said respondent, Azor H. Nickerson, at the time of and just preceding said sale, being fully persuaded that the said Azor H. Nickerson was about finally to fully consummate the promise and agreement before set forth, and which had for nearly thirteen years been a subject of conversation and desire between them, this complainant did, on the 26th of November, 2nd of December, 1881, and on the 10th of January, 1882, execute said deeds and return them to her said husband, the respondent, Azor H. Nickerson, and while so forwarding said executed deeds she wrote to him a kind and affectionate letter, imploring him to be extremely cautious as to handling said money and in making proper reinvestments. True copies of said deeds are hereto attached and marked L, M, and N, and prayed to be taken and read as a part of this bill.

6. This complainant avers and charges that the said respondent, Azor H. Nickerson, received from the several purchase-s of said lots the purchase-money thereof, amounting in the aggregate to the sum of twelve thousand dollars; that the said sum of money was in his hands a trust fund, belonging to and subject to the disposal of this complainant, and ought to have been invested by him, under
9 their said anti-nuptial agreement, in a home for her and her children; that instead of so investing the said trust fund and estate, as he was legally and equitably bound to do, the said respondent, Azor H. Nickerson, wrongfully and fraudulently, and with intent to deprive this complainant of any and all benefit of said trust fund and estate, and with the intent and view of carrying out a conspiracy formed with the respondents, Lena Diller Carter and William B. Matthews, as hereinafter more fully and particularly set forth, expended of said moneys the sum of eight thousand three hundred and eighty ($8,380) dollars in the purchase of a lot of ground, with the improvements thereon, in the city of Washington aforesaid, and described and known as part of lot numbered two (2), in square numbered one hundred and fourteen (114), beginning for the same at a certain point or stake fifty-seven feet and seven inches from the intersection of North P street with twentieth (20) street west, and running south in a straight line the width of said lot, twenty feet; thence east sixty-four feet seven inches to Dupont Circle; thence north along said circle twenty feet five inches to P street; thence west along said P street sixty feet to the said stake at the beginning; and this complainant is informed, believes, and so
10 charges that the said respondent, Azor H. Nickerson, with the intent to defraud this complainant of any and all benefit arising from the said investment of the said portion of the said trust fund, instead of having the title to the said last-described lot of ground and premises conveyed to himself, or to this complainant, or to trustees for her benefit, as he was legally and equitably bound to do, had the said title conveyed to the respondent, William B. Matthews, upon certain trusts, as will more fully and at large appear by reference to said deed from one Thomas Sheridan to said William B. Matthews, bearing date the 12th day of June, A. D. 1882, and duly recorded among the land records of Washington county, in the District aforesaid, and recorded in Liber —, a true copy of which is made a part of this bill and marked I.

7. This complainant further avers and charges that the said respondents, Azor H. Nickerson and Lena Diller Carter, some time in the year 1880, formed and entered into a conspiracy together against this complainant, which said conspiracy was afterwards joined in by the said William B. Matthews, for the purpose of defrauding the complainant of all her right, title, and interest in and to the
11 said hereinbefore described lots of ground in Portland and the proceeds arising from the sales thereof and for the purpose of divesting the same from her to the benefit of the said respondent, Lena Diller Carter; that in pursuance thereof and as the initial step in said conspiracy the respondent, Azor H. Nickerson, in and prior to the month of July, in the year 1880, represented to this

complainant that he was much in debt, and that it would be in the line of economy if she would go to the continent of Europe, where living was cheap and educational facilities plenty and reasonable, and reside while their daughter was being educated; that as a dutiful wife, though unwilling to be separated from her said husband, but having in view economy and the hope of sooner realizing her long-deferred desire of a permanent home, she consented, and on the tenth day of July, A. D. 1880, she sailed from New York with her said daughter, her said husband, Azor H. Nickerson, accompanying her to the steamer and parting from her as the steamer left her dock with every manifestation of love and affection; that, as she is informed and believes and so charges, *that* after she departed he proceeded to the city of Philadelphia, in the State of Pennsyl-
12 vania, with the knowledge and consent and at the instigation of the said respondents, Lena Dilla Carter and William B. Matthews, and rented a room or rooms for the purpose of acquiring a pretended residence in said city; that having rented said rooms (occupying them only occasionally) for the require l statutory length of time he, on the 2nd day of May, A. D. 1882, filed a libel in one of the courts of the said city against this complainant for divorce, and by means of false and perjured testimony obtained, on the 31st day of March, 1883, a pretended decree of divorce from this complainant without her knowledge, collusion, or consent; that the complainant, as soon as she heard of these proceedings, immediately returned to this country, and at once instituted proceedings to set aside said pretended decree of divorce, and on the 9th day of June, 1883, did obtain from the court by which said pretended — had been entered an order absolutely annulling and making void said pretended decree of divorce, because obtained by fraud and perjury. This complainant is informed and believes and so charges that during the pendency of said fraudulent proceedings instituted by the said respondent, Azor H. Nickerson, the said respondent, Lena Diller Carter, moved into and occupied with the said Azor H. Nickerson the house and premises, as before charged, *was*
13 purchased with the said trust funds, and that they frequently discussed said divorce proceedings together and the hoped-for consummation of the plans before that formed by them to be carried out after the said pretended decree of divorce should be granted, and that when the said respondent, Azor H. Nickerson, was absent from the said city of Washington or absent from said Lena Diller Carter, as well as while he was in said city, they corresponded, and in said correspondence referred to and wrote to each other about their said plans; that one of said letters of the said respondent, Lena Diller Carter, which is in the possession of this complainant, is dated the 5th day of June, 1882, just a month after said divorce proceedings were commenced and about ten months before said pretended decree of divorce was entered upon; and this complainant further charges, upon information and belief, that on the 2nd day of April, 1883, just two days after the granting of the said pretended decree of divorce, in further pursuance of said conspiracy, the said respondent-, Azor H. Nickerson and Lena Diller Carter, went through

the form of a pretended marriage ceremony in the city of Baltimore, in the State of Maryland. This complainant believes,
14 avers, and further charges that the said respondent, Azor H. Nickerson, procured the conveyance of the said part of said lot two, in square one hundred and fourteen, to be made to the said respondent, William B. Matthews, as trustee, as a further step in said conspiracy, so as to have it in the power of himself and the said William B. Matthews and the said Lena Diller Carter to make a conveyance of said last-mentioned lot without the necessity of requiring this complainant, as the wife of the said Azor H. Nickerson and the beneficiary under said purchase, to join in such further conveyance, and thus be in a condition to dispose of said real estate and premises without her knowledge and consent, and thus render it more easy to defraud her and to divert said trust from its proper use; that the said respondent, William B. Matthews, was the mere go-between or pretended attorney for the said Azor H. Nickerson and Lena Diller Carter and well knew the fraudulent character of all said transactions and knowingly aided and abetted in said conspiracy; that, as a further and final step in said conspiracy, the said Azor H. Nickerson, on the 31st day of May, 1883, by an instrument in writing, directed the said William B. Matthews to transfer and convey unto the said Lena Diller Carter, by the name of Lena D. Nickerson, all his, the
15 said Azor H. Nickerson's, right, title, and estate in and to said part of lot two, in square one hundred and fourteen, and thereupon, upon the said 31st day of May, the said William B. Matthews did execute to the said Lena Diller Carter, by the name of Lena Diller Nickerson, a pretended deed and conveyance to the said piece or parcel of ground and premises, as will more fully and at large appear by reference to said request in writing and said deed, duly recorded among the land records of Washington county aforesaid, in liber No. 1042, at folio 428, &c., to which reference *as* hereby made and made a part of this bill, and this complainant believes, avers, and charges that the said respondents, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, at the time of the execution of said last-mentioned deed, well knew that the prayer of this complainant to set aside said pretended and fraudulent decree of divorce would be granted, and that the deed from the said William B. Matthews was made to attempt to defraud, as far as it lay in their power, this complainant of her right and interest in and to said trust fund and estate; and this complainant is informed and believes and so charges that the said Azor H. Nickerson when he purchased
16 and moved into the house erected on said part of lot two, in square one hundred and fourteen, at the same time moved into said house all the household furniture and kitchen utensils that had been used in common by the said Azor H. Nickerson and herself prior to her said visit to Europe, a schedule of which will be offered in evidence at the proper time; and complainant further avers, upon information and belief, that on the same 31st day of May the said Azor H. Nickerson made and executed to the said Lena Diller Carter, by the name of Lena Carter Nickerson, a pre-

tended and fraudulent bill of sale for all of said household and kitchen furniture and all of his personal property in the city of Washington of every kind and description; and complainant avers and charges, upon information and belief, that the respondent, William B. Matthews, talked with and advised the said respondent, Azor H. Nickerson, in all matters touching the bringing of the pretended divorce suit in the city of Philadelphia, as well as in advising and the making and the preparation of the deed and bill of sale aforesaid. Complainant furthers avers and charges, upon information and belief, and will prove that no sooner had complainant left for Europe than said respondent, Azor H. Nickerson, and his
17 co-respondent, Lena Diller Carter, began and kept up a correspondence and were seen frequently in company together, and on one occasion at one of the springs in the State of Virginia.

From the aforegoing facts and statements this complainant avers and charges the conspiracy between the said respondents, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, to be—

First. To get this complainant abroad and out of the reach and knowledge of what was going on.

2nd. That the said respondent, Azor H. Nickerson, was to procure a divorce from this complainant, with the knowledge and connivance of the respondents, William B. Matthews and Lena Diller Carter.

3rd. That he was to dispose of all his property and put it in the hands of a trustee, who was to be the co-conspirator, William B. Matthews, so as to avoid the rights and trusts of this complainant.

4th. That he was to marry the respondent, Lena Diller Carter; and,

5th. That he was to convey or cause to be conveyed all his property to the said Lena Diller Carter.

18 8. This complainant is advised, informed, and so charges that the said bill of sale is illegal and void under the statute in such cases made and provided, in that she did not join in the execution of the same, and also that the said part of lot two, in square one hundred and fourteen, is in the hands of the said respondent, Lena Diller Carter, subject to the trusts as hereinbefore set forth, for the benefit of this complainant, under the antenuptial contract between herself and the said Azor H. Nickerson, and that the said trusts can and will be enforced in equity. She is also advised, believes, and so charges that as only a part of the said trust has been invested in lot two, square one hundred and fourteen, and that the said Azor H. Nickerson has no other property within the jurisdiction of this court out of which the payment of the residue of said trust fund can be compelled, she is entitled, in your honorable court, to seek for such payment of said residue out of said furniture. She is also informed and believes and so charges that no legal, moral, or other valuable consideration ever passed from the said Lena Diller Carter to the said Azor H. Nickerson or the said William B. Matthews for said furniture or said part of lot two, and therefore the said conveyance and bill of sale, though in form,
19 are absolutely null and void. Your complainant is further

informed and believes and charges that the said Lena Diller Carter was and is insolvent and without any property whatever.

9. Your complainant further states that there was born of said marriage between the said Azor H. Nickerson and herself one child, now living, named Florence, and now twelve years of age.

This complainant therefore prays—

1. That the United States writ of subpœna may be issued out of your honorable court to the said respondents, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, otherwise called Lena C. Nickerson, directed, commanding them and each of them to appear and answer the allegations of this bill.

2. That as the said respondent, Azor H. Nickerson, is out of the jurisdiction of this court an order of publication may be issued against him, notifying him to be and appear in this court and answer the allegations of this bill.

3. That your honorable court will pass a decree declaring the said recited bill of sale and the said conveyance from the said William B. Matthews to the said Lena Diller Carter, by the name of Lena C. Nickerson, to be null and void, and that the pre-
20 tended title of the said Lena Diller Carter, otherwise called Lena C. Nickerson, shall be divested.

4. That your honorable court will pass a decree establishing the trusts in favor of this complainant, as set forth in this bill, and directing and requiring the respondents, William B. Matthews and Lena Diller Carter, sometimes called Lena C. Nickerson, to convey the said lot two, in square one hundred and fourteen, and improvements thereon to this complainant or to trustees for her benefit and that of her child by a deed with apt and fit words to accomplish said object, or directing such conveyance to be made by a trustee, to be appointed by your honorable court for that purpose.

5. That a receiver may be appointed by your honorable court to take charge of said house erected on said lot two, in square one hundred and fourteen, together with said lot, as well as said furniture in said house, and hold the same subject to the further order of this court.

6. That this suit may operate as a *lis pendens* and notice to subsequent purchase-s.

7. This complainant does expressly waive all answers by said defendants and each of them under oath to the allegations in said bill.

8. That the said respondents, Azor H. Nickerson, Lena
21 Diller Carter, and William B. Matthews, truthful answers make to the several interrogations to each of them propounded and hereinafter named; that said complainant does expressly waive all answers by said defendants and each of them under oath to said interrogations.

9. And your complainant prays that she may have such other and further relief in the premises as the nature of her case may require.

tended and fraudulent bill of sale for all of said household and kitchen furniture and all of his personal property in the city of Washington of every kind and description; and complainant avers and charges, upon information and belief, that the respondent, William B. Matthews, talked with and advised the said respondent, Azor H. Nickerson, in all matters touching the bringing of the pretended divorce suit in the city of Philadelphia, as well as in advising and the making and the preparation of the deed and bill of sale aforesaid. Complainant furthers avers and charges, upon information and belief, and will prove that no sooner had complainant left for Europe than said respondent, Azor H. Nickerson, and his
17 co-respondent, Lena Diller Carter, began and kept up a correspondence and were seen frequently in company together, and on one occasion at one of the springs in the State of Virginia.

From the aforegoing facts and statements this complainant avers and charges the conspiracy between the said respondents, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, to be—

First. To get this complainant abroad and out of the reach and knowledge of what was going on.

2nd. That the said respondent, Azor H. Nickerson, was to procure a divorce from this complainant, with the knowledge and connivance of the respondents, William B. Matthews and Lena Diller Carter.

3rd. That he was to dispose of all his property and put it in the hands of a trustee, who was to be the co-conspirator, William B. Matthews, so as to avoid the rights and trusts of this complainant.

4th. That he was to marry the respondent, Lena Diller Carter; and,

5th. That he was to convey or cause to be conveyed all his property to the said Lena Diller Carter.

18 8. This complainant is advised, informed, and so charges that the said bill of sale is illegal and void under the statute in such cases made and provided, in that she did not join in the execution of the same, and also that the said part of lot two, in square one hundred and fourteen, is in the hands of the said respondent, Lena Diller Carter, subject to the trusts as hereinbefore set forth, for the benefit of this complainant, under the antenuptial contract between herself and the said Azor H. Nickerson, and that the said trusts can and will be enforced in equity. She is also advised, believes, and so charges that as only a part of the said trust has been invested in lot two, square one hundred and fourteen, and that the said Azor H. Nickerson has no other property within the jurisdiction of this court out of which the payment of the residue of said trust fund can be compelled, she is entitled, in your honorable court, to seek for such payment of said residue out of said furniture. She is also informed and believes and so charges that no legal, moral, or other valuable consideration ever passed from the said Lena Diller Carter to the said Azor H. Nickerson or the said William B. Matthews for said furniture or said part of lot two, and therefore the said conveyance and bill of sale, though in form,
19 are absolutely null and void. Your complainant is further

informed and believes and charges that the said Lena Diller Carter was and is insolvent and without any property whatever.

9. Your complainant further states that there was born of said marriage between the said Azor H. Nickerson and herself one child, now living, named Florence, and now twelve years of age.

This complainant therefore prays—

1. That the United States writ of subpœna may be issued out of your honorable court to the said respondents, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, otherwise called Lena C. Nickerson, directed, commanding them and each of them to appear and answer the allegations of this bill.

2. That as the said respondent, Azor H. Nickerson, is out of the jurisdiction of this court an order of publication may be issued against him, notifying him to be and appear in this court and answer the allegations of this bill.

3. That your honorable court will pass a decree declaring the said recited bill of sale and the said conveyance from the said William B. Matthews to the said Lena Diller Carter, by the name of Lena C. Nickerson, to be null and void, and that the pre-
20 tended title of the said Lena Diller Carter, otherwise called Lena C. Nickerson, shall be divested.

4. That your honorable court will pass a decree establishing the trusts in favor of this complainant, as set forth in this bill, and directing and requiring the respondents, William B. Matthews and Lena Diller Carter, sometimes called Lena C. Nickerson, to convey the said lot two, in square one hundred and fourteen, and improvements thereon to this complainant or to trustees for her benefit and that of her child by a deed with apt and fit words to accomplish said object, or directing such conveyance to be made by a trustee, to be appointed by your honorable court for that purpose.

5. That a receiver may be appointed by your honorable court to take charge of said house erected on said lot two, in square one hundred and fourteen, together with said lot, as well as said furniture in said house, and hold the same subject to the further order of this court.

6. That this suit may operate as a *lis pendens* and notice to subsequent purchase-s.

7. This complainant does expressly waive all answers by said defendants and each of them under oath to the allegations in said bill.

8. That the said respondents, Azor H. Nickerson, Lena
21 Diller Carter, and William B. Matthews, truthful answers make to the several interrogations to each of them propounded and hereinafter named; that said complainant does expressly waive all answers by said defendants and each of them under oath to said interrogations.

9. And your complainant prays that she may have such other and further relief in the premises as the nature of her case may require.

10. *Interrogations to be Answered by Azor H. Nickerson, One of the Respondents to this Bill of Complaint.*

1. State all the real estate owned and possessed by you, individually or jointly or in common with any one, on the 8th day of November, 1881.

2. State where all of said real estate was or is located; if the same was improved or not; from whom you purchased said real estate, and how much you paid for it.

3. Have you or not sold any part or portion of said real estate between said 8th day of November and the 17th day of November, 1881? If yea, state which lands, lots, or lots and improvements you sold; to whom sold; how much you received for same, and
22 if the entire purchase-money has been paid how was the same paid—in money, by draft, or check; if by draft who was the drawer, drawee, and acceptor; if by check who was the maker, payee, and did you receive the money in cash or upon the draft or check; from whom did you receive it, and upon what bank was or were said drafts or check made payable; in what bank did you deposit the same for collection or the proceeds arising from said draft or check, and what have you done with said proceeds. Give the names of all the parties and the dates of the different transactions and all the particulars connected therewith.

4. State specifically and with certainty how you spent all the money you received from the sale or sales made between the dates last above mentioned. State fully all the investments made by you with said money. Give the names of the parties you dealt with and the names of the banks or brokers with whom you had your transactions, and if you realized anything from said transactions state how much and what you did with it.

5. If you were the owner of any personal property of any
23 kind or description whatever between the dates aforesaid, state how and from whom you received it, how you invested the same, and where is the security. Give the names of the parties and the banks or brokers with whom you had the transaction or transactions, and where is the same now.

6. State all the real estate owned and possessed by you, individually, jointly, or in common with any one else, on the 16th day of November, 1881.

7. State where the same was or is situated; improved or unimproved; the character of said improvements; from whom you purchased, and how much you paid for the same.

8. Have you or not sold any part or parcel of said real estate between the 16th of November, 1881, and the 21st of December, 1881? If you state which lands, lots, or lots and improvements, to whom sold, for how much; if said purchase-money was all in cash, or by draft, or check, or note; if in cash, how was the same received; give the names of all the parties, and the bank or banks the
24 same passed through; if by draft, state who was the drawer, drawee, acceptor, and through what bank or banks did said

draft pass. If by check, who was the drawer, payee, and upon what bank? If by note, who was the maker, payee, and endorser, if any, and upon what bank payable, where and with whom was said note deposited, and was the entire purchase-money finally received by you? If so, how did you dispose of said money? Give the names of the persons and the banks with whom you had the transactions.

9. If you received or was the owner of any personal property of any character or description whatever between the dates last above, from whom did you receive it, how did you receive it, what did you pay for it, and how have you disposed of the same? Give the names of the persons and the banks with whom you had any transactions touching said personal property.

10. From the 21st day of December, 1881, down to and including the 2nd day of June, 1883, did you own or possess any
25 real estate, individually or with any one else as joint tenants, or as tenants in common, or held by any one in trust for you or your benefit or subject to your order or disposal? If yea, state fully, particularly, and in detail all the real estate so owned by you jointly or in common with others, or held by any one for you or for your benefit or subject to your order, between the dates last above mentioned.

11. If between the said dates last above mentioned you sold or disposed of in any way any of said real estate so held in either capacity, as indicated in the last above question, state how much, where the same is located, to whom sold, how much you received for the same, and how the same was paid for. If in cash, where was the same paid and by whom? Give the names of all persons or banks having anything to do with it. If by check, who was the maker, payee, and payable at what bank? If by draft, who was the drawer, drawee, and acceptor, and upon what bank or persons was said draft presented for acceptance or payment? Did you receive the en-
26 tire sum for which said real estate was sold, and what did you do with said money? How did you invest the same—in what kind of security or property, and where are now said securities or property, the fruits of said investments? In whose hands or what banks or brokers are the same now? State the names of any and all persons, the names of all bankers and banks, the names of all brokers, and where each and all live, do business, or are located with whom you deposited your money, bonds, or stocks during the period above named, giving the dates of the various transactions you had with them, each of them, or any of them.

12. If you owned or possessed any personal property between the dates last aforesaid, how and from whom did you acquire it; when, where, and from whom did you get or receive the money to purchase the same? Give the names of the parties and the dates, and how have you disposed of the same, and for what sum, and to whom, giving the names of the parties.

13. If between the 8th day of November, 1881, and the 2nd day of June, 1883, you were engaged in any way in speculating,
27 or connected with any persons, or pools, or syndicate for the purpose of speculating, state when, where, and with whom;

what banks and brokers you were so engaged or connected with; how much you invested at each time and during the entire period above stated; how much you realized or lost from said speculations, giving the exact sums and the time, the names of the persons or banks or brokers paying you the dividends or your interest or share in said investment, or the persons with whom you operated, and the banks or brokers where you made your deposit and drew your checks between the dates last aforesaid, and if you handed the money to any other person not a broker or banker for the purpose aforesaid, give their names and residences; state also where you got the money in which you engaged in your various speculations mentioned.

14. How and from whom did you get or realize the money with which you purchased the house and lot known as No. 7 Dupont Circle, being lot 2, in square 114? State fully, specifically, and with certainty if said money was received, in whole or in part, by
28 draft; state the date of said draft, where the same was payable, who was the drawer, drawee, and acceptor, and did you get the proceeds upon any such draft. If upon a check, where was said check payable, the date, the maker, and payee, and did you get the money? If from any speculations in stocks, pools, syndicates, or otherwise, state the time, how much, from whom, and give the names of all parties, banks, and brokers so engaged or connected or interested with you in any transaction whatever; give an itemized account of all your transactions, of money spent, from whom you obtained it, and your losses.

11 *Interrogatory to be Answered by Lena Diller Carter.*

1. State what you know, of your own personal knowledge and not from information or belief, in what pools, syndicates, stocks, or other speculations said Azor H. Nickerson was speculating in between 1st day of June, 1880, and the 2nd day of June, 1883. Give the names of the persons, the banks, and brokers he was so engaged with in speculating; the amount of money by him invested, together with the amounts realized or lost in said transactions.

29 12. *Interrogatory to be Answered by William B. Matthews, One of the Defendants.*

1. State, of your own personal knowledge and not from information or belief, the various speculations said respondent, Azor H. Nickerson, was engaged in between June 1, 1881, and the 2nd day of June, 1883; the character of said speculations, the names of the persons and banks or brokers with whom he was so engaged who were members of the various pools or syndicates with him, what stocks and other securities he was speculating in, the amount of his investments, how much he gained or lost by said speculations during the period aforesaid. Give an itemized account of said transactions.

The respondents to this bill of complaint are Azor H. Nickerson, Lena Diller Carter, William B. Matthews.

EMMA C. D. NICKERSON.

WASHINGTON, D. C., *To wit:*

I do solemnly swear that I have read the aforegoing bill of complaint by me signed and know the contents thereof, and that the matters and things therein stated of my own knowledge are true, and that the matters stated therein upon information and belief I believe to be true.

EMMA C. D. NICKERSON.

J. J. JOHNSON,
Sol'r for Complainant.

30 Subscribed and sworn to before me the 29th day of May, A. D. 1884.

L. I. O'NEAL, [SEAL.]
Justice of the Peace, D. C.

31 A.

Deed.

Book L, page 106; date, 24 May, 1870; con., $2,500; rec'd, 30 May, 1870.

George Hartness, 1st part, to A. H. Nickerson, 2d part.

Grant, bargain, sell, alien, convey, and confirm all the following-described lands, to wit: All of blocks one hundred and forty-five (145) and one hundred and forty-six (146), in Couch's addition to the city of Portland, in the county of Multnomah and the State of Oregon, together with all and singular the hereditaments and appurtenances:

To have and to hold all and singular the above mentioned and described premises in fee simple absolute, together with the appurtenances, forever.

And the said George Hartness and his heirs, for the consideration aforesaid, the said premises in the quiet and peaceable possession of the said party of the second part against all and every person whomsoever lawfully claiming or to claim the same shall and will warrant and defend.

GEORGE HARTNESS. [SEAL.]

Witnesses:
P. W. GILLETTE,
E. TURNER.

[U. S. R. S., two dollars, cancelled.]

STATE OF OREGON,
32 *County of Multnomah,* } *ss:*

Acknowledged by George Hartness before P. W. Gillette, a notary public, duly commissioned and qualified.

[SEAL.] —— ——.

[U. S. R. S., 5 cts., cancelled.]

33 B.

Deed.

Book L, page 638; date, 19 Sept., 1870; con., $1,000; rec'd 4 Oct., 1870.

A. H. Nickerson and Emma D. Nickerson, his wife, to P. W. Gillette.

Do bargain, sell, and convey the following-described premises, to wit: All of the north half of block numbered one hundred and forty-five (145), in Couch'- addition to the city of Portland, in the county of Multnomah, State of Oregon, as laid down on the recorded maps, plats, and surveys of said addition on file in the clerk's office of Multnomah county, Oregon:

To have and to hold the said premises, with their appurtenances, forever.

And I, the said A. H. Nickerson, do hereby covenant that I am the owner in fee simple of said premises, that they are free from all incumbrances, and that I will warrant and defend the same from all lawful claims whatsoever.

A. H. NICKERSON. [SEAL.]
E. D. NICKERSON. [SEAL.]

Witnesses:
C. P. FERRY.
A. S. GROSS.
[U. S. R. S., $1.00, cancelled.]

STATE OF OREGON, } ss:
County of Multnomah, }

34 Acknowledged on 20 Sept., 1870, by A. H. Nickerson and E. D. Nickerson, his wife, before—

[NOTARIAL SEAL.]

A. S. GROSS,
Notary Public, Oregon.

C.

Deed.

Book L, page 692; date, 19 Sept., 1870; con., $1,080; rec'd 17 Oct., 1870.

A. H. Nickerson and Emma D. Nickerson, his wife, to H. R. Kincaid.

Do bargain, sell, and convey the following-described premises, to wit: All of the south half of block numbered one hundred and forty-five (145), in Couch's addition to the city of Portland, in the county of Multnomah, State of Oregon, as laid down on the recorded maps, plats, and surveys of said addition on file in the clerk's office of Multnomah county, Oregon:

To have and to hold the said premises, with their appurtenances, forever.

And I, the said A. H. Nickerson, do hereby covenant that I am the owner in fee simple of said premises, that they are free from all incumbrances, and that I will warrant and defend the same from all lawful claims whatsoever.

35 A. H. NICKERSON. [SEAL.]
E. D. NICKERSON. [SEAL.]

Witnesses:
C. P. FERRY.
A. S. GROSS.
[U. S. R. S., $1.50, cancelled.]

STATE OF OREGON, } ss:
County of Multnomah, }

Acknowledged on 20 Sept., 1870, by A. H. Nickerson and E. D. Nickerson, his wife, before—
[NOTARIAL SEAL.]
A. S. GROSS,
Notary Public, Oregon.

Deed.

Book L, page 106; date, 24 May, 1870; con., $2,500; rec'd 30 May, 1870.

George Hartness, 1st part, to A. H. Nickerson, 2d part.

See foregoing deed, given in full hereinbefore.

36 D.

Deed.

Book L, page 565; date, 17 Sept., 1870; con., $1,600; rec'd 24 Sept., 1870.

A. H. Nickerson and Emma D. Nickerson, his wife, to J. B. Underwood.

Do bargain, sell, and convey the following-described premises, to wit: All of block one hundred and forty-six (146), in Couch's addition to the city of Portland, in the county of Multnomah and the State of Oregon:

To have and to hold the said premises, with their appurtenances, forever.

And I, the said A. H. Nickerson, do hereby covenant that I am the owner in fee simple of said premises, that they are free from all incumbrances, and that I will warrant and defend the same from all lawful claims whatsoever.

A. H. NICKERSON. [SEAL.]
E. D. NICKERSON. [SEAL.]

Witnesses:
C. P. FERRY.
A. S. GROSS.
[U. S. R. S., $2.00, cancelled.]

STATE OF OREGON, }
County of Multnomah, } *ss:*

Acknowledged on 20 Sept., 1870, by A. H. Nickerson and Emma D. Nickerson, his wife, before—

[NOTARIAL SEAL.]

A. S. GROSS,
Notary Public, Oregon.

37 (1.) E.

Deed.

Book L, page 665; date, 10 Oct., 1870; con., $2,750; rec'd 11 Oct., 1870.

James Miner and —— Miner, his wife, to J. S. Walker and A. H. Nickerson.

Do bargain, sell, and convey the following-described parcels of real estate, to wit: All of the town lots situate within Couch's addition to the city of Portland, Oregon, and described on the maps and plats of said addition as lots No. three (3), 6, and 7, in block No. 24, with the appurtenances:

To have and to hold the same, with all the privileges and appurtenances, forever; and we do covenant with the said J. S. Walker and A. H. Nickerson and their legal representatives forever that the said premises are free from all incumbrances, and that said James Miner will warrant and defend the same to the said J. S. Walker and A. H. Nickerson and their heirs and assigns forever against the lawful claims and demands of all persons whatsoever.

JAMES MINOR. [L. S.]
SARAH J. MINOR. [L. S.]

Witnesses:
P. P. MURPHY.
CHAS. A. BALL.

[U. S. R. S., $3.00, cancelled.]

38 (3.)

STATE OF OREGON, }
Multnomah County, } *ss:*

This certifies that on this 10th day of October, 1870, before me, the undersigned, personally appeared the within-named James Minor and Sarah J. Minor, known to me to be the persons described in and who executed the within instrument, and acknowledged the same to be their free act and deed; and Sarah J. Minor, wife of said James Minor, on a private examination made by me, separate and apart from her said husband, acknowledged to me that she executed the same freely and voluntarily and without fear or compulsion from any one.

In witness whereof I hereunto set my hand and seal the day and year last above written.

[NOTARIAL SEAL.] CHARLES A. BALL,
Notary Public.

(5.) F.

Deed.

Book M, page 13; date, 29 Oct., 1870; con., $2,000; rec'd 29 Oct., 1870.

Lewis M. Starr and E. J. Starr, his wife, to J. S. Walker and A. H. Nickerson.

Do bargain, sell, and convey the following-described parcel of real estate, to wit: Lots four (4), five (5), and eight (8), in block
39 twenty-four (24), in Couche's addition to the city of Portland, in Multnomah county, State of Oregon, according to the maps of said city:

To have and to hold the same, with all the privileges and appurtenances, forever.

And we do covenant with the said Walker and Nickerson and their legal representatives forever that the said premises are free from all incumbrances, and that we will warrant and defend the same to the said Walker and Nickerson, their heirs and assigns, forever against the lawful claims and demands of all persons whatsoever claiming by, through, or under us.

LEWIS M. STARR. [L. S.]
MRS. E. J. STARR. [L. S.]

Witnesses:
R. R. WILLIAMS.
JAMES B. UPTON.

[$2.00 stamp, cancelled.]

STATE OF OREGON, } ss:
—— *County,* }

This certifies that on this 29th day of October, 1870, before me, the undersigned, personally appeared the within-named L. M. Starr and E. J. Starr, known to me to be the persons described in and who executed the within instrument, and acknowledged the same to be their free act and deed, and E. J. Starr, wife of said L. M. Starr, on a private examination made by me, separate and apart from
40 her said husband, acknowledged to me that she executed the same freely and voluntarily and without fear or compulsion from any one.

In witness whereof I hereunto set my hand and seal the day and year last above written.

[NOTARIAL SEAL.] JAMES B. UPTON,
Notary Public for Multnomah County, State of Oregon.

G.

Deed.

Book N, page 256; date, 2 Nov., 1867; con., $150; rec'd 10 Dec. 1870.

C. Bills, sheriff of Multnomah county, in the State of Oregon, 1st part, to John S. Walker and A. H. Nickerson, 2d part.

Whereas by virtue of an execution issued out of the circuit court for the county aforesaid, in said State, under the seal of said court, on 23 Feb., 1867, at the suit of L. M. Starr, plaintiff, and against Samuel Farman, defendant, directed and delivered to the then sheriff, commanding him that out of the personal property of the said defendant, and, if sufficient personal property of the said defendant could not be found, then out of the real property belonging to said defendant, on a day in said writ mentioned, to wit, 11 Feb., 1867, on which day said judgment was duly docketed in said court, or at any time afterwards, he, the said sheriff,
41 should cause to be made certain moneys in said writ specified, he, the then sheriff, did levy on and seize all the estate, right, title, and interest which the said defendant so had of, in, and to the said premises hereinafter conveyed and described, and on 2 April, 1867, sold the said premises at public auction at the court-house door of said county, having first given public notice of the time and place of such sale according to law, at which sale the said premises were struck off to L. M. Starr, who has transferred and assigned his right and claim to John S. Walker and A. H. Nickerson for the sum of $150, he being the highest bidder and that being the highest sum bid*den* therefor.

And whereas the said sale was, on 29 July, 1867, by an order of the said court, duly confirmed and more than sixty days have elapsed since the confirmation of said sale, and the said sale of said premises remains unredeemed:

Now, therefore, by virtue of the said writ and *the* pursuance of the act in such cases made and provided, and in consideration of the sum of money so bid, — hath sold and doth grant and convey all the estate, right, title, and interest which the said defendant had on the said 11th day of February, one thousand eight hundred
42 and sixty-seven, or at any time afterwards, of, in, or to that certain piece or parcel of land known and described as lots Nos. (4, 5, and 8) four, five, and eight, in block No. (24) twenty-four, of Couch's addition to the city of Portland, in Multnomah county, State of Oregon:

To have and to hold the said above-mentioned premises as fully and absolutely as the said party of the first part, as sheriff as aforesaid, can or ought to by virtue of the said writ and the law relating thereto.

C. BILLS, [SEAL.]
Sheriff of Multnomah County, Oregon.

Witnesses:
GEO. H. DURHAM.
JOHN P. WARD.

STATE OF OREGON, } ss:
County of Multnomah, }

Acknowledged on 29 Oct., 1870, by C. Bills, sheriff of said county of Multnomah, before—

[NOTARIAL SEAL.] GEO. H. DURHAM,
Notary Public for Oregon.

[U. S. R., .05c., cancelled.]

H.

Deed.

Book P, page 500; date, 4 Nov., 1871; con., $27; rec'd, 10 Nov., 1871.

Henry Weber to John S. Walker and A. H. Nickerson.

43 Do remise, release, and forever quitclaim the following-described real estate: Lots numbered five (5), six (6), and seven (7), in block twenty-four (24), Couch's addition to the city of Portland, county of Multnomah, and State of Oregon, together with all and singular the appurtenances and c.:

To have and to hold the said premises forever.

HENRY WEBER. [SEAL.]
ROSANA WEBER. [SEAL.]

Witnesses:
JOHN C. CARROLL.
G. E. WITHINGTON, JR.

[U. S. R. S., 50c., cancelled.]

STATE OF OREGON, } ss:
—— *County,* }

This certifies that on this the 8th (eight-) day of November, 1871, before me, the undersigned, a notary public, personally appeared the within-named Henry Weber, known to me to be the person described in and who executed the within deed, and acknowledged that he executed the same; and Rosanna Webber, wife of said Henry Webber, on being examined separate and apart from her said husband, acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I hereunto set my hand and seal this eight- day of November, 1871.

[NOTARIAL SEAL.] JOHN C. CARROLL,
Notary Public, Multnomah County, Oregon.

44 I.

Decree.

In Circuit Court.

Journal 9, page 599; date, 26 March, 1874; judgment roll 4938.

A. H. NICKERSON, Plaintiff,

vs.

PERCY WALKER and SHERMAN W. WALKER, Minor Heirs of John W. Walker, Deceased.

Decree setting apart all of lots 7 & 8 and north half of lot 6, in block 24, Couch's addition to Portland, Multnomah county, Oregon, to the plaintiff, and all of lot 3 and south half of lot 6 and south half of lot 4, in said block, to defendant, Percy Walker, and all of lot 5 and north half of lot 4, in said block, to defendant, Sherman W. Walker.

J.

Decree.

In Circuit Court.

Journal 14, page 441; date, 20 June, 1878; judgment roll 6373.

A. H. NICKERSON, Plaintiff,

vs.

PERCY WALKER and SHERMAN W. WALKER, Minor Heirs of John H. Walker, Deceased, Defendants.

Decree setting apart all of lots 7 and 8 and north half of lot 6, in block 24, Couch's addition to Portland, Multnomah county,
45 Oregon, to the plaintiff; and all of lot 3 and south half of lot 6 and south half of lot 4, in said block, to defendant, Percy Walker; and all of lot 5 and north half of lot 4, in said block, to defendant, Sherman W. Walker.

K.

Decree.

In Circuit Court.

Journal 15, page 95; date, 30 Oct., 1878; judgment roll 6465.

A. H. NICKERSON, Plaintiff,

vs.

PERCY WALKER and SHERMAN W. WALKER, Minor Heirs of John H. Walker, Deceased, Defendants.

Decree setting apart lots 7 and 8 and north half of lot 6, in block 24, Couch's addition to Portland, Multnomah county, Oregon, to the plaintiff; and all of lot 3 and south half of lot 6 and south half of lot 4, in said block, to defendant, Percy Walker; and all of lot 5 and north half of lot 4, in said block, to defendant, Sherman W. Walker.

L.

Deed.

Book 50, page 436; date, 9 Nov., 1881; con., $2,000; rec'd 29 Dec., 1881.

A. H. Nickerson and Emma D. Nickerson, his wife, to Margaretta Marshall.

46 Do grant, bargain, sell, and convey the following-described parcel of real estate, situated in the city of Portland, county of Multnomah and State of Oregon, to wit: The north north half of lot numbered six (6), in block numbered twenty-four (24), of Couch's addition to said city of Portland, together with the appurtenances, &c.:

To have and to hold the same forever; and I, said A. H. Nickerson, do covenant with the said Margaretta Marshall and her legal representatives forever that the said real estate is free from all incumbrances, and that I will warrant and defend the same to the said Margaretta Marshall, her heirs and assigns, forever against the lawful claims and demands of all persons whatsoever.

A. H. NICKERSON.
EMMA D. NICKERSON.

Signed, sealed, and delivered in presence of—
WM. J. ARMSTRONG.
WILMER W. WETZEL.
Witnesses as to A. H. Nickerson.

Signed, sealed, and delivered in presence of—
PAUL DRUCKMUTH, of Dresden,
CARL SCHRODER, of Dresden,
As to Emma D. Nickerson.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

47 This certifies that on this ninth day of November, A. D. 1881, before me, the undersigned, a commissioner of deeds for the State of Oregon, residing in the city of Washington, District of Columbia, personally appeared the within and above named A. H. Nickerson, who is known to me to be the identical person described in and who executed the within instrument, and ackowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand official seal the day and year last above written.

[Seal Commissioner of Deeds.]

JOHN E. BEALL,
A Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

KINGDOM OF SAXONY, *City of Dresden:*

This certifies that on the twenty-sixth day of November, A. D. 1881, before me, the undersigned, a United States consul residing in the Kingdom and city above named, personally appeared Emma D. Nickerson, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily for the uses and purpose therein mentioned.

48 In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

[CONSUL SEAL.]

M. T. MASON,
U. S. Consul.

M.

Deed.

Book 52, page 41; date, 17 Nov., 1881; con., $5,000; rec'd 10 Jan'y, 1882.

A. H. Nickerson and Emma D. Nickerson, his wife, to Aaron Meier.

Do grant, bargain, sell, and convey described parcel of real estate, to wit, situated in the city of Portland, county of Multnomah and State of Oregon, to wit: Lot numbered (7) seven, *to* block numbered (24) twenty-four, of Couch's addition to said city of Portland, together with the appurtenances, &c.:

To have and to hold the same forever.

And I, said A. H. Nickerson, do covenant with the said Aaron Meier and his legal representatives forever that the said real estate is free from all incumbrances, and that I will warrant and defend the same to the said Aaron Meier, his heirs and assigns, forever against the lawful claims and demands of all persons whosoever.

49 A. H. NICKERSON. [L. S.]
EMMA D. NICKERSON. [L. S.]

Signed, sealed, and delivered in presence of—
WILMER U. WETZEL,
THOS. SHERIDAN,
As to A. H. Nickerson.

Signed, sealed, and delivered in presence of—
PAUL DRUCKMUTH, of Dresden,
CARL SCHRODER, of Dresden,
As to Emma D. Nickerson.

DISTRICT OF COLUMBIA, } ss:
City and County of Washington, }

This certifies that on this seventeenth day of November, A. D. 1881, before me, the undersigned, a commissioner of deeds for the State of Oregon in and for the District of Columbia, residing in Washington, D. C., personally appeared the within-named A. H. Nickerson, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[Seal Commission- of Deeds.]

JOHN E. BEALL,
50 *A Commissioner of Deeds for the State of Oregon — and for the District of Columbia.*

KINGDOM OF SAXONY, *City of Dresden:*

This certifies that on this second day of December, A. D. 1881, before me, the undersigned, a consul of the United States for the Kingdon and city aforesaid, personally appeared the within-named Emma D. Nickerson, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

[U. S. Consul Seal.]

M. T. MASON,
U. S. Consul.

N.

Deed.

Book 53, page 39; date, 22 Dec., 1881; con., $5,000; rec'd 9 Feb., 1882.

A. H. Nickerson and Emma Derby Nickerson to Margaretta Marshall.

Do bargain, sell, and convey the following-described parcel of real estate, to wit: All of lot eight, in block numbered twenty-
51 four (24), of Couch's addition to the city of Portland, in the county of Multnomah and the State of Oregon, and more particularly described in the surveys and plats of said addition as recorded in the record of deeds for said Multnomah county, together with the appurtenances, &c.:

To have and hold the same forever.

And we do covenant with the said Margaretta Marshall and her legal representatives forever that the said real estate is free from all incumbrances, and that we will warrant and defend the same to the said Margaretta Marshall, her heirs and assigns, forever against the claims and demands of all persons whatsoever.

A. H. NICKERSON. [L. S.]
E. D. NICKERSON. [L. S.]

Executed in the presence of—
JOHN E. BEALL.
HENRY KLINGE.
As to A. H. Nickerson.

PAUL DRUCKMUELLER, of Dresden,
CARL SCHRODER, of Dresden,
As to Emma Derby Nickerson.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

This certifies that on the twenty-second day of December, 1881, before me, the undersigned, a commissioner of deeds for the State of Oregon, residing in Washington, D. C., personally appeared the within-named A. H. Nickerson, who is known to me to be the
52 identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal the day and year last above written.

[Commissioner's Seal.]

JOHN E. BEALL,
A Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

KINGDOM OF SAXONY, } ss:
City of Dresden, }

This certifies that on this tenth day of January, 1882, before me, the undersigned, personally appeared the within-named E. D. Nickerson, known to me to be the person described in and who executed the within instrument, and acknowledged to me that she executed the same, and she, said E. D. Nickerson, wife of A. H. Nickerson, and on an examination made by me separate and apart from her said husband, acknowledged to me that she executed the same freely and voluntarily and without fear, coercion, or compulsion from any one.

In testimony thereof I have hereunto set my hand and official seal the day and year last above written.

[U. S. Consulate Seal]

J. N. T. MASON,
U. S. Consul.

53 *Subpœna to Ans. Issued May* 31, 1884; *Returned June* 14, 1884.

In the Supreme Court of the District of Columbia. May 31, 1884.

EMMA C. D. NICKERSON, Complainant, }
against } No. 9027, Eq. Doc. 24.
AZOR H. NICKERSON *et al.*, Defendants. }

The President of the United States to Azor H. Nickerson, Lena Deller Carter, *alias* Lena C. Nickerson, William B. Matthews, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.,*
[SEAL.] By M. A. CLANCY, *Ass't Clerk.*

Marshal's Return.

Served Lena Diller Carter, *alias* Lena C. Nickerson, and William B. Matthews June 2, 1884. Azor H. Nickerson not to be found.

CLAYTON McMICHAEL, *Marshal.*

54 *Answer of Defendant, Azor H. Nickerson. Filed Sept. 2d, 1884.*

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA DILLER CARTER, Defendants. } No. 9027.

Separate answer of defendant, A. H. Nickerson.

The separate answer of the defendant, Azor H. Nickerson, to the bill of complaint in the above-entitled cause.

This defendant, saving and reserving all and all manner of exceptions to the bill for and on account of its manifold errors and imperfections, &c., nevertheless, for answer to the same, or to so much thereof as he is advised it is proper that he should answer, answering, says:

1st. First. This defendant denies that the city of Washington, in the District of Columbia, is or ever has been his legal residence or domicil, and says that from August 17th, 1861, to June 28th, 1882, he was an officer of the United States Army, and during that time was stationed at various places in the different States and Territories,
but that he gained thereby no legal residence at any of the
55 places aforesaid, including the city of Washington; that he never had any legal residence, except in the States of Ohio and Pennsylvania, and that in the year 1865 he formally changed his residence from the State of Ohio to the State Pennsylvania; that on the 28th day of June, 1882, he was, at his own request, retired from active service, and ordered to proceed to his home, to report thence by letter to the Adjutant General of the Army; that he did so proceed to his home in the city of Philadelphia, in the State of Pennsylvania, and on the first day of July, 1882, he did so report from his home in that city, which is now his legal residence; that in the meantime he has spent his time in Washington and New York cities and elsewhere, as his business, health, or pleasure prompted him to do; that by and with the permission which he had from the Secretary of War he left the limits of the United States and came to the Dominion of Canada, and since the 2nd day of June, 1883, he has been living in the Dominion of Canada, where, for the benefit of his failing health, he still remains and is now undergoing medical treatment, and he denies that he is a fugitive from justice.

2nd. Second. This defendant admits that he was married to the complainant at the time and place specified, but he denies and says
it is false that always since that time she has been his
56 lawful wife, as will be hereinafter more fully set forth.

3rd. Third. This defendant says that for many years and in many places, including Portland, Oregon, and Washington, D. C., he has bought and sold real estate, lands, stocks, bonds, and other

interests as his means permitted and opportunities offered; that he always used his own money for this purpose, and that he never received a dollar of money or property from the complainant on any account whatever, and he denies that at any time or place, either before or after his marriage with the complainant, *that* he ever, verbally or in writing or in any manner whatsoever, promised the complainant or any one else or that he ever agreed with her or with any one else to reserve any portion of his property or real estate in Portland, Oregon, or elsewhere as a marriage portion or settlement or as a trust fund for the benefit of the said complainant and the children she claims to have anticipated; no such conversation or any of a like character or effect ever occurred between this defendant and complainant or any one else, and all statements to that effect, from whatever source, are absolutely and unqualifiedly false; and, further answering, this defendant says that at no time or place, either before or after his marriage to the complainant, either
57 verbally or in writing or in any manner whatsoever, did this defendant ever promise and agree with the complainant or with any one else to convey blocks numbered one hundred and forty-five (145) and one hundred and forty-six (146) in Couch's addition to the city of Portland, or either of said blocks, or any property whatsoever, real or personal, to the complainant, at any time before or after her marriage to this defendant, as a marriage portion or settlement for the benefit of herself and her children, should any be born of said marriage, or for any purpose or upon any trust whatsoever; or did this defendant ever promise and agree with the complainant that he would erect thereon a suitable dwelling-house for a home for herself and children, or that he would erect thereon any dwelling-house at all for any purpose whatever, and at no time or place, either before or after his marriage to the complainant, either verbally or in writing or in any manner whatsoever, did this defendant ever promise and agree with the complainant or with any one else that, if the complainant should so elect, they would sell said two blocks of land and reinvest the proceeds arising therefrom in other lots in said city of Portland which complainant might think would advance more rapidly in value; or did this defendant ever promise and agree with the complainant or with any one else to regard, consult, follow, or observe the
58 wishes of the complainant as to the sale of said lots or of either of them, or as to reinvesting the proceeds arising therefrom; or did this defendant ever promise and agree with the complainant that said reinvestment should be held upon trusts, as alleged in the bill of complaint, or upon any trusts whatsoever; or did this defendant ever promise and agree with the complainant to reinvest the proceeds arising therefrom or to dispose of such reinvestment, or that when the said reinvestment shall be disposed of, either before or after having advanced to a value sufficient to pay for such a home, the proceeds thereof should be applied exclusively or at all to the purchase of such home; or did this defendant ever promise and agree with the complainant to invest any of his property or the proceeds of any of his property or the proceeds of any reinvestment

of any of his property in any home whatsoever or upon any trust whatsoever, or to invest the same in any manner for the benefit of the complainant or of the children whom she appears to have anticipated. No such conversation or any of a like character or effect ever occurred between this defendant and the complainant or any one else, and all such allegations in the bill of complaint are false from beginning to end, and all statements to that effect, from
59 whatsoever source, are also and unqualifiedly false. And, further answering, this defendant denies that he ever said that he contemplated building a house in Portland, Oregon, and says that the blocks upon which the complainant alleges he said he should build were in an undesirable location for residence purposes; had been an old brick yard, with unhealthy surroundings, and they were bought to sell and were sold as soon as the price offered was satisfactory, and without reference to any desire to invest elsewhere. Still further answering, this defendant says that he recollects that the mother of the complainant, Mrs. Celia D. Kenney, visited Portland, Oregon, at about the time specified, and that in conversation with him she mentioned the following as the objects of her visit, viz: She said that her sister, Mrs. Trevett, was living very unhappily with her husband and she was going to try and persuade her to separate from him and get a divorce. Second. She had heard that there were good opportunities for investing in real estate in Portland, Oregon, and if she saw any such opportunities she thought it might be possible to get her husband to invest, and, besides, she said she wanted to see what sort of a man he was whom her daughter purposed to marry; and the said Mrs. Trevett did afterwards separate from her husband and went to Europe, where for more than ten or twelve years
60 she has resided while her husband remained and, this defendant believes, still remains in Portland, Oregon. This defendant did not at any time or place ever inform the complainant's mother, the said Mrs. Celia D. Kenney, that this defendant had promised and agreed with the complainant that if the complainant would marry him he would immediately after marriage convey the said blocks of ground or any other property to the complainant as a marriage settlement, or would hold them as trustee for the complainant's separate benefit; nor did he ever inform the said Mrs. Celia D. Kenney that if they were at any time sold the proceeds should be invested in other property, to be held in like manner for complainant's separate benefit; nor did he ever inform the said Mrs. Kenney that when said blocks of ground or any other lots purchased in lieu thereof should be finally sold the proceeds arising therefrom should be invested in the name of and for the sole and separate benefit of the complainant and her children. No such conversation or any of like character or effect ever occurred, nor did this defendant ever make any such statements or any statements of like character or effect to the said Mrs. Celia D. Kenney or to any one else. Indeed, nothing was ever said to this defendant by the said Mrs. Celia D. Kenney or by any one else about any marriage portion or
61 settlement, and had Mrs. Kenney mentioned such a subject this defendant would undoubtedly have asked her what would

be the amount of her daughter's dot. But no marriage portion, fund, settlement, dot, or trust was ever mentioned to this defendant, and he never heard of such intimation until after the commencement of the proceedings in equity cause No. 8613 in this court, and then only in the wilfully false and perjured statement of the complainant, who well knows that this defendant never had in his possession or trust any money or property of value of which he could have defrauded her, even had he been so disposed; and this defendant says that it is true that the said lots never were conveyed to trustees for the complainant's benefit; and he says neither the complainant nor any one else ever suggested any such thing; and he says it is true that the title to the same remained in this defendant; and he says the complainant never suggested any change in the title to said lots, nor did she ever have any equitable interest in said lots, as now pretended by her, nor was there ever any such promise or agreement as alleged.

4th. Fourth. The defendant admits that he sold the blocks specified, and that he purchased lots in the location and at about the times stated, but he denies that the purchase-money was from any trust fund or marriage portion or settlement, either
62 express or implied, and he says that the purchase-money was his own; that he had realized a sum of money from the sale of lands in the Puget Sound Homestead Association, of which he was nearly a half owner, and from other sources, and it is his impression that the money with which said lots were purchased was derived from this source. The sales were made, not because complainant so elected or desired, but because this defendant realized a profit, and the investments were made because he expected to sell again at a profit. The complainant did not purchase or select the lots that were bought, nor did she have anything to do with the selection of or purchase of said lots, nor was she consulted as to the same or as to the judiciousness of the purchase of said lots or as to the advisability of making an investment in the same, nor did she have any voice in the matter whatsoever; but whether any part of the same funds were used in the payment for the purchase or whether the funds used were exclusively those realized from the sale of other lands in the Homestead Association he is unable to say positively, as he has no reason to and did not keep separate bank accounts, as he would have done had he been the trustee of a marriage portion or settlement or other trust fund. This defendant says that he asked
63 John S. Walker, an officer in the army, to join him in the purchase of said lots because they were in a location where, if during the ownership they were required to fill the lots and grade the streets, the expense would greatly exceed the original purchase-money, and he was afraid he could not carry it alone; that, if possible, they would sell them as soon as certain railroad improvements were made and before the street improvements were ordered; that soon after, and before a sale could be effected, this defendant was ordered to Arizona for duty, and the said joint owner, Walker aforesaid, was ordered to Alaska, he being a paymaster in the army, and that while on this trip the steamship upon which he, the said

Walker, and his wife were passengers, viz., the "George S. Wright," was lost with all on board, including the said Walker and his wife, and the said joint interest of Walker's then vested in his minor heirs, and no sale of the property could be effected until this defendant has sued for and obtained a decree of partition. In the meantime the streets were ordered to be filled and paved, and the lots being upon low ground, where standing water accumulated, they were *observed* to be filled, and this defendant was obliged to make payments thereon far exceeding the original amount of the purchase-money thereof, and, finally, in 1878, this defendant succeeded in selling the lots, and when the deeds were made out and for-
64 warded the purchaser discovered a flaw in the proceedings for partition, and the sale was defeated until another decree of the court could be obtained; but the complainant had willingly and freely, without any conditions, signed the deed, and owing only to the circumstances above mentioned the property was not finally disposed of until after this defendant had been ordered to duty in Washington, and when said lots were disposed of this defendant used the money derived from the sale as he used all other money belonging to him, in such manner and in such speculations as he thought best; and this defendant avers that the decree of partition was made as above stated.

And, further answering, this defendant denies that said lots or any of them were held by him under any such agreement or trust as is alleged. He denies and says that it is false that these sales and investments or any other sales and investments made by him were made in pursuance of the said alleged agreement and understanding between him and the complainant or in pursuance of any promise, agreement, or understanding with the complainant of a like character or effect; and he denies and says that it is false that he ever made any agreement or promise with the complainant or had any understanding with the complainant in relation to
65 these sales or in regard to any other sales or investments made by him either verbally or in writing, either expressedly or impliedly.

5th. Fifth. This defendant admits that he sent deeds for the lots specified as situate in Portland, Oregon, for the complainant to sign and execute, and he says that she did sign and execute the same freely and voluntarily; but he denies and says that it is absolutely and unqualifiedly false that the said lots or that the money received by him as the proceeds of the said sales were then or ever subject to any antinuptial or post-nuptial agreement, or promise, or trust, or that any such agreement, or promise, or trust between him and the complainant ever subsisted, and never having subsisted was never the subject of conversation between this defendant and the complainant, nor did he ever write, or say, or do anything to deceive or that could have deceived the complainant into believing that he was going to consummate or carry out any such promise, agreement, understanding, or trust or to lead her to suppose that any such existed; and he says that the statement that the complainant saw by the consideration mentioned in said deeds (twelve thou-

sand dollars) that the said lots had sufficiently advanced in value to accomplish the object for which she falsely says that said
66 lots have been purchased is false, in that the half lot was sold first, one of the others afterwards, and the remaining one some time subsequently, all at different times, to different persons, and neither sale having any reference to the others, and separate deeds for the same were executed at different times without reference to each other; and he further says that more than three years prior to the signing of these deeds the complainant, as before stated, signed and with this defendant executed a deed conveying all of these same lots which had been sold by this defendant to one George James for the total consideration of four thousand five hundred dollars, which sale was, as before stated, defeated only by the discovery then made of a defect or irregularity in the proceedings of the court in granting the decree of partition between the interests of the minor heirs of John S. Walker aforesaid and this defendant, a defect which was remedied by the subsequent decree or decrees granted in 1878 and referred to in the 4th section of the complainant's bill.

6th. Sixth. This defendant admits that he received moneys for the sales of lots situate in Portland, Oregon, at about the times specified, and that the amount was between ten and twelve thousand dollars, but the exact amount he does not and cannot now
67 state, the agent who sold them having charge of all of his real estate in Oregon and the Territory of Washington, and the commission for the sales, for the care of the same, the payment of taxes, street improvements, and other expenses being sometimes paid by money sent by this defendant and sometimes by being deducted from funds in the hands of said agent, but this defendant denies and says that it is false that the money received by him on account of such sales or on any other account whatever was ever subject to any agreement, trust, or antinuptial promise whatever, and he denies and says that it is false that there ever was made or subsisted any such antinuptial contract, agreement, or promise in regard to any money, lands, or hereditaments, real or personal, and he says that he never heard of any such agreement, trust, or promise until after the commencement of the said suit in equity cause No. 8613 in this court, and then only in the false statements of the complainant; and, further answering, this complainant admits that he purchased the premises numbered seven (7) Dupont Circle, Washington, D. C., at the time and for the amount specified, but he says that he did not make said purchase wrongfully or fraudulently or with any intent to deprive the complainant of any benefit of any trust fund or estate or with any
68 intent or view of carrying out any conspiracy whatever, and he denies and says it is false that the purchase-money was derived from the sale of lots in Portland, Oregon, or that the money was from any trust fund or estate or subject to any promise or agreement whatever, and he says that the purchase-money belonged to himself and was realized from the purchase and sales of stocks and bonds in which this defendant was then dealing, and that he

belonged to a pool in Washington, D. C., for the purchase and sale of stocks and bonds; that he also dealt on his separate account (with two or more banking-houses in Washington, D. C.) in stocks and bonds, and was also a member of a pool in New York city which operated in stocks and bonds, and that in these transactions he was at times nearly bankrupt and at other times had money largely in excess of his original investments or capital, and that he never kept any separate bank accounts or any account of any real or supposed trust fund, marriage portion, or settlement; more particularly because he had never heard of his being subject to or in any way concerned in any such trust, portion, or settlement; so that any money received by him from the sale of property in
69 Portland, Oregon, or elsewhere was merged with other moneys and with the rest had been lost and regained and regained and lost many times after the receipt thereof and prior to the purchase of the house and lot on Dupont Circle aforesaid; and he denies and says that it is false that he caused the title to said property on Dupont Circle to be placed, put, or made in the name of a trustee for the purpose of defrauding the complainant or any other person, and he says that he caused the property to be placed in the hands of a trutee for the sole purpose of convenience of transfer, as at the time of the said purchase he was under orders to proceed for duty to the department of Arizona; and, further, this defendant denies and says that it is false that there ever subsisted between himself, William B. Matthews, Lena Diller Carter, or any other person or persons or that he ever formed with them or with any one any conspiracy to defraud the complainant or any other person or persons whatever, or that there ever subsisted between this defendant and William Matthews or Lena Diller Carter or any other person or persons or that he ever formed with them or with any one any conspiracy whatever; and this defendant further says that he never said or did, nor does he know of any one else having said or done, anything to aid or carry out any such conspiracy, nor has he any knowl-
70 edge of any such conspiracy or of any conspiracy against the complainant or to injure her or to defraud her in any manner. He says that soon after his marriage with the said Lena Diller Carter he offered to transfer the house in question to her, but that she refused absolutely to have it done.

7th. Seventh. In answer to the seventh paragraph of the bill of complaint this defendant denies and says that it is false that he, in the year 1880 or at any other time, ever formed or entered into or conversed about or had anything to do with any conspiracy with the said Lena Diller Carter and William B. Matthews or with either of them or with any other person or persons for the purpose of defrauding the complainant of any money, property, or hereditaments, real or personal, of any kind or for the purpose of defrauding her in any manner whatsoever, and he denies that there ever was any such conspiracy or any conspiracy whatsoever against the complainant. This defendant does not believe that the defendant, Lena Diller Carter, knew, but says that to the best of his knowledge and belief she did not know, of the complainants' intention to go abroad

or knew that she had gone until some time after the complainant's departure; and this defendant says that he had sold said property in Portland, Oregon, long prior to his marriage to the said
71 defendant, Lena Diller Carter; and he denies and says that it is false that he ever prior thereto conversed with the said Lena Diller Carter about any property situate in Portland, Oregon; and he denies any says that it is false that he ever advised or in any way sought to induce the said complainant to go to Europe, and he says that, on the contrary, she, the said complainant, did against his will and without his consent forsake this defendant and go to and remain in Europe for nearly three years, and that when he found that she was going he did all in his power to keep the facts from the public, both on account of his official position and his little daughter, and that it was owing to these facts that an implied consent was inferred by their friends and the public; and he denies and says that it is false that when the complainant left him he had any intentions of getting a divorce; and he denies and says that it is false that the said Lena Diller Carter ever aided or abetted him in procuring the said divorce, or that there was any way that she could have so aided and abetted him had she so desired; and he further denies and says that it is false that he entered into any conspiracy to induce the complainant to go to Europe or elsewhere, and he says that he never conversed with the said Lena Diller Carter in regard to the complainant's going, nor does he believe
72 that the said Lena Diller Carter knew of such intention or of the complainant's departure until some time after she had gone; and he says that he did not know nor does he remember ever having seen or heard of the said William B. Matthews until the complainant had been gone nearly or quite a year; nor did he ever mention the said Lena Diller Carter to the said William B. Matthews until about the time the decree of divorce was granted, and he says that he believes that the first time that the said William B. Matthews met or spoke with the said Lena Diller Carter was upon the morning of this defendant's marriage with her, when he introduced him to her for the first time; and this defendant admits that he has lived in the city of Philadelphia, Pennsylvania, for several years, and that when in the city he occupied apartments at lodgings or hotels as was most economical and convenient for him, and he avers that he obtained a decree of divorce which he was advised by counsel and he believes was legal and regular from the complainant, and that he was legally married with the said Lena Diller Carter, all at the dates specified; and he denies that the said marriage ceremony was a "pretended" one, and he denies that it was in pursuance of any conspiracy, and says that it was duly authorized
73 and celebrated according to law, and was entered into by himself and the said Lena Diller Carter in full faith in its legality; and he denies that the said divorce was procured by fraud or perjury or false testimony, and he alleges that he expects to prove that the said decree of divorce was set aside by reason of the false testimony of the complainant, assisted by an unlawful conspiracy

between her and other enemies of this defendant, which placed this defendant under duress before and during said proceedings. Further answering, this defendant says that after he had purchased and furnished the house numbered seven (7) Dupont Circle, in the city of Washington aforesaid, he placed said premises in the hands of a real estate broker—Thomas E. Waggaman, Esq.—for rent, and that for about two months said real estate broker tried to procure a tenant for the same, and that at about this time Mrs. E. A. Carter, the mother of the defendant, Lena Diller Carter, was endeavoring to find a smaller and more easily attended house, and as she had not succeeded, and was obliged to move with one of her daughters afflicted with a fatal illness, this defendant suggested that she take and occupy the said house on Dupont Circle; that at first both she and her daughters absolutely declined to do so, and it was only after a further search of several days' duration and still failing
74 to secure either a house or suitable rooms that she consented to rent and occupy the said house at a rent of $80.00 a month (which rent she always punctually paid), this defendant retaining the rooms on the upper floor, which he occupied when in the city; and he says that the statement of the complainant that the said Lena Diller Carter moved into and occupied the said house with this defendant is a covert and malicious insinuation with fraudulent intent, inasmuch as the said house was occupied by the said Mrs. E. A. Carter, her three daughters, and her granddaughter, and during the entire time previous to this defendant's marriage with the said Lena Diller Carter—viz., from September, 1882, to April, 1883—he was never alone with her nor did he see her at all except in the presence of one or more members of the family; and, further answering, this defendant says that he has no knowledge of any letter written to him by the said Lena Diller Carter and dated June 5, 1882; and this defendant admits that he conveyed to his said wife, Lena Carter Nickerson, by a bill of sale certain household and kitchen furniture and personal property in the city of Washington, but he denies that the said bill of sale was a pretended and fraudulent one, and he says that the same was conveyed to her as a means for her support and protection and for no other purpose; that
75 this defendant caused the said property on Dupont Circle, in the city of Washington, to be conveyed to his said wife, Lena D. Carter Nickerson, as a means for her support and protection and for no other reason whatever, and he denies and says that it is false that there ever subsisted any conspiracy, real or implied, between him and the said William B. Matthews and Lena Diller Carter or either of them or any other person or persons, and he says that he believes and so charges that the pretended antinuptial agreement or trust set forth in the complainant's bill is the result of a conspiracy to defraud, on the part of the said complainant, her mother, Mrs. Celia D. Kenny, and other persons unknown to this defendant, and that the said conspiracy of the said complainant and others was concocted by her and her mother and others unknown to this defendant since the commencement of the proceedings in said suit No. 8613, and that the false statements made by them have no foundation in law

or equity nor any foundation except a pretended one based upon the false testimony of the complainant; and,

First. That this defendant denies and says that it is false that he ever conspired with or conversed with said William B. Matthews or Lena Diller Carter, either directly or indirectly, about the complainant's intended departure for Europe, nor was anything said
76 & 77 or done to get the complainant to go abroad; but, on the contrary, the complainant went abroad contrary to and against the wishes of this defendant and without his consent.

Second. That, to his knowledge and belief, neither William B. Matthews nor Lena Diller Carter aforesaid ever knew of or heard about this defendant's divorce suit until about the time such suit was instituted, nor was there any conspiracy with regard to said divorce suit.

Third. That this defendant never conversed with said William B. Matthews or Lena Diller Carter, either one or both, about the sale of any of his said property, nor about any sales of property for the purpose of avoiding any real or pretended trust, right, or interest whatever, nor was there any conspiracy relative to any of said property.

Fourth. That it is false that he was to marry Lena Diller Carter, as alleged in the bill of complaint, nor was there any conspiracy as to his marrying her.

Fifth. That it is false that he was to convey or cause to be conveyed all or any part of his property to the said Lena Diller Carter, as alleged in the bill of complaint, or that any transfer was made for the purpose of fraud or to avoid any pretended rights or trust of the complainant, or of any other person or persons, or that any such transfer or conveyance was made in pursuance of any conspiracy.

78 8th. Eighth. This defendant denies and says that it is false that the real or personal property conveyed to the said defendant, Lena Diller Carter, as aforesaid, or that the house, lot, and premises numbered 7 Dupont Circle, Washington, D. C., aforesaid, or that the furniture therein contained was ever, during his ownership thereof, or is now, subject to any antinuptial promise, agreement, portion, fund, or trust whatever, or that he was ever subject to any antinuptial promise, agreement, portion, fund, or trust whatever; or that the said property and hereditaments were conveyed to the said Lena Dilla Carter without legal, moral, or other valuable consideration; and he says that, on the contrary, besides the legal, moral, and valuable consideration aforesaid, he also insisted upon there being a consideration *reducitee* to a money value, and, therefore, did exact from the said Lena Diller Carter a money consideration, as set forth in the said deeds and instruments of transfer aforesaid.

9th. Ninth. This defendant admits that there was a child born of the marriage of the complainant and himself, whose name is Florence, and that she is now twelve years of age.

10th. Tenth. In answer to the interrogatories propounded by the complainant to this defendant, to which the complainant prays

that answers may be made by this defendant, expressly waiv-
79 ing oath to such answers, this defendant says that he is informed and advised by counsel that the complainant cannot require answer from this defendant to any interrogatories unless she demands that the same be answered under oath.

Second. That the interrogatories propounded by the complainant to this defendant are improper and irrelevant and are not such interrogatories as she can or is entitled to require this defendant to make answer to, and this defendant is ready to answer all proper interrogatories when the same shall be propounded to him by the complainant according to law, and in a manner in which he will be under obligation to make answer to the same; and, further answering the said bill of complaint, this defendant says that he was married to the complainant on the 13th day of August, A. D. 1870, and that prior to and from that time until after January 21st, A. D. 1884 (on which date the amended bill in said cause No. 8613 was filed), he never heard of any such antinuptial promise, agreement, fund, portion, or trust as is alleged in the bill of complaint, nor did the complainant ever even pretend or claim that there was any such during all of said years, nor even in the original bill filed by her in
80 said suit No. 8613 did she pretend or claim that there was any such antinuptial promise, agreement, fund, portion, or trust, nor did she ever set up the same until the amended bill was filed in said suit No. 8613, when this defendant heard of the same with surprise and for the first time, and only then through her false statements; and this defendant says that the complainant has been guilty of such laches that even if there were any foundation for her claim, which he denies, yet she could not now, after such laches, enforce the same in this honorable court, and he asks the full benefit of her laches; and this defendant, further answering, says that by the fourth section of the third chapter of a certain act of Parliament made and passed in the twenty-ninth year of the reign of His late Majesty King Charles the Second, for the prevention of frauds and perjuries, and commonly called the statute of frauds or the statute of frauds and perjuries (which said section of said act has continued to be and is still in full force and effect in this District) it is provided and enacted that no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or
81 concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized. And this defendant, further answering, says that the said promise, contract, and agreement in the said bill mentioned and particularly set forth, mentioned; or referred to in the 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of said bill, and therein alleged to have been made and entered into by this defendant and the complainant was not, nor

was any such promise, contract, or agreement, nor was any memorandum or note thereof reduced into writing and signed or executed by this defendant or by any other person thereunto by this defendant lawfully authorized; nor was the same or any memorandum or note thereof reduced into writing and signed or executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant, and that no action can be brought whereby to charge this defendant upon the same,
82 and that this defendant cannot be affected thereby; and this defendant claims the same benefit as if he had pleaded the same statute in this cause; and this defendant, for the reasons and under the circumstances aforesaid, is advised and insists that the said complainant is not entitled to any relief against the defendant touching the matters complained of in the said bill of complaint; and this defendant asks that he may have the full benefit of all objections to the said bill, and that he may have the same advantage and benefit from this answer as though he had specially demurred to said bill of complaint; and, having fully answered the same, he prays to be hence dismissed with his reasonable costs in this cause incurred.

AZOR H. NICKERSON.

ENOCH TOTTEN,
Sol'r for A. H. N.

ONTARIO, *Canada, ss:*

U. S. CONSULATE, ST. CATHARINE, ONT.

I, Azor H. Nickerson, being first duly sworn according to law, do depose and upon oath say that I am one of the defendants named in the above-entitled cause, and that I have read the aforegoing answer by me subscribed and know the contents thereof, and
83 that the facts therein state- upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

AZOR H. NICKERSON.

Subscribed and sworn to before me this 11th day of August, A. D. 1884.

L. H. COLLARD,
U. S. Consular Ag'y.

84 *Answer of Defendant, Lena D. Carter. Filed Sept.* 2, 1884.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA D. CARTER, Sometime LENA C. NICKERSON. } No. 9027.

The answer of Lena Diller Carter, sometime Lena C. Nickerson, to the bill of complaint against her in this cause filed.

This defendant, reserving all rights and exceptions to the many errors, false statements, defects, and imperfections apparent in said bill, in answer thereto, says:

First. She denies, on information and belief, that the complainant is a resident of the city of Washington, in the District of Columbia, and avers that she has been for several years past absent from the United States, as shown by her bill in this cause, and previously thereto resided temporarily in many places, her legal residence being that of her then husband, the defendant, Azor H. Nickerson, which was, as this defendant is informed and believes, in the State of Pennsylvania, and the complainant never resided in
85 the District of Columbia except temporarily with her said husband, who, being an officer of the United States Army, was on duty in said District, but the same was never his legal residence; that the defendant, William B. Matthews, is a resident of this District; that it is true that the residence of this defendant and that of her family is and has been for many years the District of Columbia; that it is not true that the legal residence of the defendant, Azor H. Nickerson, ever was the District of Columbia; that it is true that Azor H. Nickerson did reside for several years temporarily in the said District, and that he left said District about June, A. D. 1883, and is at present residing in Canada, but she has no knowledge or information that he is a fugitive from justice.

Second. That this defendant believes it to be true that the complainant and the defendant, Azor H. Nickerson, were married at the time alleged, but it is not true that the complainant has always been since August 13th, A. D. 1870, the lawful wife of the defendant, Azor H. Nickerson. On the contrary, she says the truth is, as shown by the complainant's bill, that on March 31st, A. D. 1883, a decree of divorce was granted to the defendant, Azor H. Nickerson, by one of the courts of the city of Philadelphia, in the State of Pennsylvania, divorcing him from the bond of matrimony with the com-
86 plainant, which decree was not set aside until June 9th, A. D. 1883, and during that interval the complainant was not in law the wife of the defendant, Azor H. Nickerson.

Third. This defendant says she has no knowledge personally of any conversations between the complainant and the defendant, Azor H. Nickerson, after they were engaged to be married, nor of the

statement alleged by the complainant to have been made to her by the defendant, Azor H. Nickerson, in the spring of 1870, after their engagement, as to the object of his acquiring, holding, and using his property or the disposition he intended to make thereof, and the alleged statements are so general, loose, and indefinite and so generally alleged that even had they been made—and this defendant denies, on information and belief, that they were made—they would have been without binding effect, and cannot in any way affect this defendant. This defendant has no knowledge of what property was owned by the defendant, Azor H. Nickerson, in the spring of 1870, and she says further that even had such statements been made the same would have been of no effect, not having been reduced to writing, and this defendant prays that she may have the same benefit of the statute of fraud as if she had specially pleaded the same; and

87 this defendant is informed, believes, and avers that the relations between the complainant and the said defendant, Azor H. Nickerson, were so unhappy and disagreeable to both parties after marriage that, so far from desiring to have a home together, they had separated as man and wife before the complainant left the United States, and she left the said defendant Nickerson with the avowed intention of never living with him again.

This defendant has no knowledge of the alleged feelings of Mistress Celia D. Kenney, nor of the alleged statements made to her by the defendant Nickerson concerning his marriage with the complainant, and she does not believe the said statements alleged were ever made, and calls for proof of the same, if in any — material to this case.

This defendant says that she is informed and believes it is true that no property was ever conveyed by Azor H. Nickerson to trustees for the benefit of complainant, and she believes it to be true that complainant never made any demand or request that he should convey any, and the complainant never had any right or ground to make any such demand or request.

Fourth. This defendant says that she is informed and believes that the defendant, Azor H. Nickerson, did sell some property in

88 the city of Portland, Oregon, about the time alleged, and that he purchased other property in his own name in said city in common with John S. Walker, which property so purchased was afterwards partitioned and a portion set off to said defendant Nickerson in severalty; but she denies, on information and belief, that the sale, purchase, or partition suit were made or brought in pursuance of any agreement and understanding with the complainant, or that any agreement or understanding existed, as alleged by the bill, between the complainant and the defendant Nickerson; and she denies, on information and belief, that the defendant Nickerson held said real estate alotted to him in severalty subject to any trust in favor of the complainant, and she avers that the exhibits filed with the bill and referred to fail to disclose any right or trust in favor of the complainant.

Fifth. This defendant has no personal knowledge of the fact alleged by the complainant that drafts of deeds were sent to her in Europe

in 1881 to execute and return, and that she did join in them as the wife of the defendant, Azor H. Nickerson, and return them, thus conveying her right of dower in the said Portland, Oregon, lots; but this defendant is informed and believes that the complainant did join in the deeds forwarded her by Azor H. Nickerson, her
89 then husband, in 1881, and did so at his request to convey her right of dower, and that she joined in said deeds at the times she asserts, and at the request of her said husband, whose property was being conveyed; and in addition to the deeds named by the bill, this defendant is informed and believes that the complainant joined in another deed conveying the equity of redemption in a lot in square 210, in the city of Washington, which deed was joined in by the complainant in 1881, in or about the month of November, the same having been sent to her in Europe, the said equity of redemption belonging to the said defendant, Azor H. Nickerson, who sold the same on or about November, 1881, and by said sale realized twenty-six hundred dollars. Having bought and sold said equity subject to a trust deed on the property, this defendant has no personal knowledge of the motives of the complainant in joining in and returning said deeds. She avers, however, on belief, that no agreement or trust ever existed between the complainant and the defendant, Azor H. Nickerson, in relation to the same, and that the complainant signed the said deeds because she was requested so to do by her then husband, Azor H. Nickerson, who had acquired said property from his own means and then owned the same, holding title in his own name therefore.

90 Sixth. This defendant does not know how much the defendant Nickerson received from the property in Portland, Oregon, for which said deeds were executed, but she is informed and believes that for his equity of redemption in the lot in square 210, in the city of Washington, in this District, sold in November, 1881, he received twenty-six hundred and fifty dollars, and the land records show this property was deeded in November, 1881; and the complainant in her bill alleges the deeds of the Oregon property were made in November, 1881, December, 1881, and January, 1882; and this defendant avers the truth to be that the property now owned by this defendant, being part of lot two (2), in square numbered one hundred and fourteen (114), was not purchased until June, A. D. 1882; and this defendant is informed, believes, and avers that during that interval of time the defendant Nickerson dealt largely in stock speculations and both lost and made considerable money; and this defendant does not know what money was used in purchasing the property now owned by her. This defendant denies, on information and belief, that the defendant Nickerson had the property in square 114 conveyed to the defendant Matthews, as trustee, for the purpose of defrauding the complainant, but she *in*formed
91 and believes it was done for convenience of transfer in case the defendant Nickerson was absent from the District. This defendant believes that the quotation from the deed from Sheridan to the defendant Matthews, trustee, of the property in square 114 is correctly made; and she believes and avers that the said deed was

and is perfectly legal, and passed the legal title to said property to the defendant Matthews, as trustee, and the equitable title to the said defendant Nickerson free from all right, title, or interest of the complainant in or to said property.

Seventh. This defendant, in answer to the seventh paragraph, says that it is utterly untrue and false that she at any time whatever entered into any conspiracy with the defendant Nickerson or the defendant Matthews or either of them, or that such conspiracy was ever formed; and she says that it is false and untrue that she ever entertained the purpose of defrauding the complainant in any manner whatever; and she further says she did not know until after her marriage with the defendant Nickerson that he owned or had owned any property in Portland, Oregon; that it is false that this
92 defendant in any way encouraged, advised, suggested, or aided in the departure of the complainant for Europe in the month of July, 1880, or at any other time whatever, and she avers the truth to be that she has no personal knowledge of the reasons of the plaintiff in going to Europe, but she is informed and believes that the complainant and the defendant Nickerson had lived for years in unhappy discord and disagreement, and that the complainant had stated to the said Nickerson that she intended to leave him and never live with him again and to go to Europe, and that they in fact separated some time before she left for Europe, and that, so far from going to Europe by the persuasion and inducement of the defendant Nickerson, the complainant went there against his wishes and consent; that this defendant has no knowledge of the circumstances connected with the departure of the complainant, as set forth in the bill; that it is untrue and false that this defendant had any knowledge of or consented to or instigated the defendant, Azor H. Nickerson, to proceed to Philadelphia or to hire rooms in that city for the purpose of acquiring a residence therein, and this defendant avers the truth to be that she did not know that the de-
93 fendant Nickerson had commenced or entertained any intention of commencing proceedings for a divorce against the complainant until after the same had been instituted.

This defendant admits that on the 31st day of March, 1883, the defendant Nickerson obtained a decree of divorce in one of the courts of the city of Philadelphia from the complainant, and on the same day she avers that the said defendant Nickerson informed this defendant that he had obtained said decree of divorce from the complainant; that after years of unhappy discord and mutual disagreement the complainant had informed him that she would leave him and never live with him again, and had gone to Europe against his consent and had remained away against his will, although he, the said Nickerson, was in delicate health and subject to severe attacks of sickness from injuries and wounds received in the military service of the United States; that the complainant and he had in fact separated before she left for Europe; that he had filed his suit against her for a divorce, and after due and regular proceedings had obtained a decree of divorce. He then spoke of his affection for this defendant, and urged her to marry him immediately, giving

as a reason, among others, why the ceremony should be performed without delay that it was necessary for him
94 to visit the West on business almost immediately, and that he desired to be married before he left Washington; that if this defendant would marry him he could provide for her and assist her family in many ways, and also that this defendant need not accompany him, but, while he was in the West, remain with her ill sister. He especially urged that this defendant should marry him at once for the reason that he knew that her family would never consent to her marrying him because he was a divorced man and that his divorce would soon be generally known, whereas if she married him at once the opposition from her family would be useless, and they would necessarily have to submit to it as an accomplished fact. He made many such and other appeals to this defendant, who, moved by his urgency, pitying his condition as represented by him, feeling gratitude towards him for his kindness to herself and family, and trusting and believing in him on account of his high position, his age, and unimpeached character and standing, found herself not indifferent to his appeals, and, prevented by his haste and requests from consultation with her relatives and friends, inexperienced and influenced by her feelings, this defendant yielded to the impertunities of the defendant Nicker-
95 son, and consented to marry him on April 2nd, A. D. 1883; that on the said second day of April, A. D. 1883, the defendant Nickerson exhibited to and gave this defendant a certified copy of the decree of divorce from the court in the city of Philadelphia, a copy of which is herewith filed, marked "Exhibit L. D. C. No. 1," and is prayed to be taken as a part of this answer, and on the same day this defendant left her home alone, joined the defendant Nickerson, went with him to Baltimore, Maryland, and was there married to him by the Reverend J. Julius Sams, at number 207 Gilmor street, as will more fully appear by reference to the copy of the certificate of marriage herewith filed, marked "Exhibit L. D. C. No. 2," to which reference is hereby made, and it is prayed to be taken as a part hereof; that after said marriage this defendant and the defendant Nickerson returned to this city, arriving here about 4 p. m., and returned to number 7 Dupont Circle, and there informed the family of this defendant of the marriage; that the members of her family were much displeased thereat; that this defendant went to Baltimore to be married at the request of the defendant Nickerson, who stated that there was less probability of their intended marriage becoming known by their so doing until after the ceremony had been per-
96 formed. This defendant contracted said marriage in the utmost good faith and without the slightest doubt as to the perfect legality, good faith, and binding character of the divorce granted by the Philadelphia court to the defendant Nickerson; that this defendant had no suspicion that any question could be made as to the propriety, regularity, and honesty of the proceedings in Philadelphia on which the divorce had been granted to the defendant Nickerson until she learned, on the 21st day of May, A. D. 1883, that the complainant had returned to this country and had instituted proceed-

ings to have the decree annulled; that she was at first assured by the defendant Nickerson that those proceedings by the complainant would amount to nothing, as the divorce proceedings had been conducted in a proper and unimpeachable manner; that as soon as this defendant became convinced there was any doubt about the propriety or legality of the divorce proceedings in Philadelphia she informed the defendant Nickerson that they must separate until the court had passed upon the legality of the divorce proceedings; that in consequence of this determination she separated from the defendant Nickerson on May 30th, 1883; that on the second day after this defendant's marriage with the defendant Nickerson said de-
97 fendant Nickerson informed this defendant that he intended to have the real estate on Dupont Circle conveyed and to give the personal property contained in the house thereon to this defendant, and on several occasions subsequently he expressed this intention to this defendant, and at the time he and this defendant agreed to separate he informed this defendant that he should carry out his previously-formed intention, as he felt in duty bound to provide for this defendant, she having married him in good faith and being without means of her own; that on June 1st, A. D. 1883, said defendant Nickerson delivered to this defendant the deed from the defendant Matthews to this defendant, a copy of which is filed with the original bill in this cause and is referred to as a part of this answer; and he also delivered to this defendant a bill of sale of the personal property belonging to said Nickerson in said house number 7 Dupont Circle, and at the same time delivered possession to this defendant of all said personal property and real estate, which possession she has held and still holds. A copy of said bill of sale is herewith filed in this cause, marked Exhibit L. D. C. No. 3, to which this defendant refers and prays that it may be taken as a part of this answer. This defendant is informed, believes, and avers
98 that the complainant had not and could not have nor has she now any legal or equitable rights in the said real or personal property, and this defendant accepted said deed and bill of sale in perfect good faith in that belief, which belief she still holds. This defendant denies that said deed or bill of sale was executed, delivered, or accepted with any design to defraud or injure the complainant or any other person or in any way interfere with her rights or the rights of any other person, and she avers that the said complainant had not nor has she now any rights in said property, but the said defendant Nickerson had a perfect right to hold or dispose of the property as he saw fit independent of and free from the assent, consent, or dissent of the complainant. In reply to the allegation that this defendant occupied the same house with the defendant Nickerson she says that in the fall of A. D. 1882 the mother of this defendant, with whom she resided, was compelled to change her residence; that she found great difficulty in procuring a suitable residence, owing especially to the ill health of a sister of this defendant, who was at the time quite ill and has since died; that the de-
fendant, Azor H. Nickerson, whom this defendant and her
99 family had known for some time, urged the mother of this

defendant to rent a portion of this house, which house had been advertised for rent, as will more fully appear by reference to a copy of the advertisement as already on file in case No. 8613, equity, with the answer of this defendant, to which reference is hereby made, and it is prayed to be taken as a part of this answer, said house being number 7 Dupont Circle, Washington city. The said defendant Nickerson offered to rent the house at a very moderate sum if he was allowed to retain two rooms in the third story and to board with the family; that this defendant's mother accepted said offer and removed to said house and continued to reside there, paying to the defendant Nickerson eighty ($80.00) dollars per month rent, furnishing him his board, and allowing him to reserve the two rooms on the third floor. This defendant denies that she and defendant Nickerson formed any plans concerning the divorce suit of the said Nickerson, and any statement to the contrary is false; and this defendant says that the complainant has not filed with her amended bill the letter she pretends to have from this defendant to the defendant Nickerson, and consequently this defendant has not had the opportunity to examine the alleged letter. This defendant denies that any letter exists or that
100 she ever wrote any letter that will support or give color to the allegations contained in this bill or that any such correspondence as is alleged in the bill was ever carried on between this defendant and the defendant Nickerson; that this defendant has already answered fully on the subject of her marriage with the defendant Nickerson. This defendant again denies and says it is utterly false that any conspiracy existed between herself and the defendants Nickerson and Matthews, or that anything was ever done looking towards carrying out such conspiracy, and this defendant says she was not acquainted with the defendant Matthews, and did not know of his existence until April 2nd, 1883, when she was introduced to him by the defendant Nickerson; that it is true the defendant Matthews executed the deed to this defendant as he was directed by the defendant Nickerson, and in so doing he only fulfil-ed his duty. This defendant has already answered and stated fully all the facts in connection with the conveyance of the real estate and the gift of the personal property to this defendant, and this defendant again denies that anything whatever was done to defraud the complainant out of any right that she might have; and
101 this defendant heard it stated for the first time in the amended bill in cause 8613, equity, that the common use by husband and wife of personal property belonging to the husband gives the wife rights in that property which prevent the husband from disposing of it in the District of Columbia, and this defendant asks the same benefit as if she had demurred to this part of the bill.

This defendant again says that the charge by the complainant that a conspiracy existed between this defendant and the defendants Nickerson and Matthews is utterly and totally false and without any foundation whatever; and,

1st. This defendant did not get or try to get the complainant to go abroad or know that she was going.

2nd. This defendant did not know that the defendant Nickerson had brought or was going to bring a suit for divorce until after it was brought.

3rd. That this defendant did not know what property the defendant Nickerson had or that he had disposed of any or proposed to dispose of any of it, nor did she know that the legal title to the real estate on Dupont Circle was in the defendant Matthews until after her marriage with the defendant Nickerson.

4th. It is not true that she was to marry the defendant Nickerson, as alleged.

102 5th. It is not true that the defendant was to convey or cause to be conveyed all of his property to this defendant.

8th. To the eighth paragraph she says that she is advised by counsel and is informed and believes and avers that the said bill of sale from the defendant Nickerson to this defendant was perfectly legal and valid, and there was and is no necessity for the complainant's joining therein, and this defendant holds the said part of lot 2, in square 114, in this city, free from and clear of all right, title, interest, claim, or demand, either at law or in equity, on the part of the complainant or any other person whomsoever, and the said complainant is not entitled to any remedy, either at law or in equity, against said real estate or personal property; and this defendant says that she gave a legal and moral consideration for said property, and also the money consideration recited in said conveyance for the same.

9th. To the ninth paragraph she says she admits that there was a child born of the marriage of the complainant and the defendant Nickerson, whose name is Florence and who is twelve (12) years of age.

103 In reply to the interrogatory propounded to this defendant she says that she is ready and willing to answer all proper interrogatories when the same shall be propounded to her according to law, but that she is advised by her counsel that the interrogatory propounded by the plaintiff is improper and irrelevant and is improperly and illegally propounded, and this defendant is not in any manner called upon to answer the same.

And this defendant, further answering, says that by the fourth section of the third chapter of a certain act of Parliament, made and passed in the twenty-ninth year of the reign of His late Majesty King Charles the Second, for the prevention of frauds and perjuries, and commonly called the statute of frauds or the statute of frauds and perjuries (which said section of said act has continued to be and is still in full force and effect in this District), it is provided and enacted that no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage or upon any contract or sales of lands, tenements, or hereditaments or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which said action shall be brought or some memorandum or note thereof

104 shall be in writing and signed by the party to be charged

therewith or some other person thereunto by him lawfully authorized; and this defendant says that the said alleged promise, contract, and agreement in the said bill mentioned and particularly set forth, mentioned or referred to in the third, fourth, fifth, sixth, seventh, and eighth paragraphs of said bill and therein alleged to have been made and entered into by the complainant and the defendant, Azor H. Nickerson, was not, nor was any such promise, contract, or agreement, nor was any memorandum or note thereof, reduced into writing and signed or executed by the defendant, Azor H. Nickerson, or by any other person thereunto by him lawfully authorized, nor was the same or any memorandum or note thereof reduced into writing and signed or executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant, and that no action can be brought whereby to charge this defendant upon the same, and that this defendant cannot be affected thereby; and this defendant claims the same benefit as if she had pleaded the same statute in this cause; and this defendant, for the reasons and under the circumstances aforesaid, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint; and this defendant says that the complainant has been guilty of such laches that even if there were any foundation for her claim, which this defendant denies, yet she could not now, after such laches, enforce the same in this honorable court, and she asks the full benefit of the complainant's laches; and this defendant asks that she may have the full benefit of all objections to the said bill, and that she may have the same advantage and benefit from this answer as though she had specially demurred to said bill of complaint; and, having fully answered the same, she prays to be hence dismissed with her reasonable costs in this cause incurred.

105

106

LENA DILLER CARTER.

HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
Sol'r- for Def't.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

LENA DILLER CARTER.

Subscribed and sworn before me July 31, 1884.

R. J. MEIGS, *Clerk*,
R. J. MEIGS, JR., *As't.*

107 EXHIBIT C. D. C. No. 1. Filed Sept. 2, 1884.

Subpœna Sue Libel for Divorce.

Form. 24.

In the Court of Common Pleas for the County of Philadelphia, No. 4, of June Term, 1882.

AZOR H. NICKERSON
versus
EMMA C. NICKERSON. } No. 45.

And now, the seventeenth day of March, anno Domini 1883, on motion of Read and Pettis, Esquire-, attorney- for the libellant, rule granted on respondent to show cause why divorce should not be granted, returnable the 31st day of March, A. D. 1883.

And on the seventeenth day of March, anno Domini 1883, the return of Henry Phillips Coleman, Esquire, examiner, of the deposition of witnesses taken before him on the part of the libellant was presented and filed.

Whereupon the court, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty-three, after mature and solemn deliberation, being satisfied therewith, and proclamation being duly made for the respondent to come forth, and
108 she not appearing, the court do order, adjudge, and decree that the said Azor H. Nickerson, the libellant, be divorced and separated from the bond of matrimony contracted with the said Emma C. Nickerson, the respondent, and that all and every the duties, rights, and claims accruing to either of the said parties by reason of the said marriage shall henceforth cease and determine.

COUNTY OF PHILADELPHIA, *ss:*

I do hereby certify that the foregoing is a true transcript of the record of the decree of the said court in the above case.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court of common pleas the thirty-first day of March, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] CHAS. H. WHITE,
Prothonotary.

109 EXHIBIT L. D. C. No. 2. Filed Sep. 2, 1884.

Certificate of Marriage.

This is to certify that on the second day of April, in the year of our Lord one thousand eight hundred and eighty-three, at 207 Gilmore St., in the city of Baltimore, in the diocease of Maryland, I joined together in holy matrimony Azor H. Nickerson and Lena

Diller Carter according to the rites of the Protestant Episcopal Church in the United States of America, and in conformity with the laws of the State of Maryland.

In witness whereof I have hereunto put my name this second day of April, A. D. one thousand eight hundred and eighty-three.

J. JULIUS SAMS,
Pastor of Holy Trinity Church.

Witness:
WM. B. MATTHEWS.

110 EXHIBIT L. D. C. No. 3. Filed Sep. 2, 1884.

Know all men by these presents that I, Azor H. Nickerson, of the first part, for and in consideration of the premises, as well as of the sum of five dollars to me in hand paid by Lena Carter Nickerson, who before her marriage was Lena Diller Carter, party of the second part, the receipt whereof is hereby acknowledged, have sold and by this instrument do convey unto the said party of the second part, her executors and assigns, all my household and kitchen furniture of every kind and character, together with all of my personal property in the city of Washington; to have and to hold the same unto the party of the second part, her executors and assigns forever; and I do, for myself and my legal representatives, agree with the party of the second part to warrant and defend the sale of the aforementioned property and chattels unto the said party of the second part and her legal representatives against all and every person whatsoever.

111 Witness my hand and seal this the 31st day of May, 1883.

A. H. NICKERSON. [SEAL.]

Witness:
G. B. SHAFER.
JOHN E. BEALL.

Exceptions to the Ans. of Defend't Nickerson Filed Sep. 10, 1884.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
v.
AZOR H. NICKERSON *et al.*
} Equity No. 9027.

And now comes the complainant, by her solicitors, and file- the following exception to the answer of the defendant, Azor H. Nickerson:

For that the said defendant, Azor H. Nickerson, has not answered the matters and things inquired about in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, and 14th interrogatories, nor of his information and belief thereof, nor has he pretended to answer said matters and things inquired about, but has confined his

answers exclusively to the matters and things alleged and charged in the bill of complaint herein, without setting forth the
112 subject-matters inquired about in each and all of the interrogatories contained in said bill of complaint, in all which particulars the said complainant excepts to the said answer of said defendant, Azor H. Nickerson, as evasive, imperfect, and insufficient, and hereby prays that the said defendant, Azor H. Nickerson, may be compelled to put in full and sufficient answers thereto.

W. W. WILSHIRE &
J. J. JOHNSON,
Sol'rs for Complainant.

Exceptions to the Ans. of Def't Carter Filed Sep. 10, 1884.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } Equity No. 9027.

And now comes the complainant, by her solicitors, and file the following exception to the answer of the defendant, Lena D. Carter:

For that the said defendant, Lena D. Carter, has not answered the matters and things inquired about in the first interrogatory
113 contained in the bill of complaint herein, nor of her information and belief thereof, nor has she pretended to answer said matters and things inquired about, but has confined her answers exclusively to the said matters and things alleged and charged in the said bill without setting forth the subject-matters inquired about in said interrogatory.

In all which particulars the said complainant excepts to the said answer of said defendant, Lena D. Carter, as evasive, imperfect, and insufficient, and hereby prays that the said defendant, Lena D. Carter, may be compelled to put in full and sufficient answer thereto.

W. W. WILSHIRE &
J. J. JOHNSON,
Sol's for Complainant.

114 *Amended Answer of Def't, L. D. Carter. Filed Dec.* 16, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA DILLER CARTER, Defendants. } No. 9027.

Now comes the defendant, Lena Diller Carter, and, by leave of court first had and obtained, files the following as an amendment

to the answer heretofore filed by her to the bill of complaint in the above-entitled cause:

This defendant, further answering the bill of complaint, and as an amendment to and part of her answer to the same, says that by the law of the State of Oregon, and by sections 771 and 775 of an act passed in said State, it is provided that (section 771) "No estate or interest in real property other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority and executed with such for-
115 malities as are required by law," and that (section 775) "In the following cases the agreement is void unless the same or some note or memorandum thereof expressing the consideration be in writing and subscribed by the party to be charged or by his lawfully authorized agent. Evidence, therefore, of the agreement shall not be received other than the writing or secondary evidence of its contents in the cases prescribed by law."

"1. An agreement that, by its terms, is not to be performed within a year from the making thereof.

"4. An agreement made upon consideration of marriage, other than a mutual promise to marry.

"6. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of any interest therein.

"7. An agreement concerning real property, made by an agent of the party sought to be charged, unless the authority of the agent be in writing."

And this defendant, further answering, says that at the time that the defendant, Azor H. Nickerson, became engaged to marry the complainant, and at the time that said defendant, Azor H. Nickerson, did marry the complainant, and for a long time prior
116 to his said marriage with the complainant and prior to the time when he first became engaged to marry the complainant, and from that time until the institution of this suit, the said law of the State of Oregon, and said sections of said act passed in said State as aforesaid, remained and continued to be in full force and effect; and this defendant, further answering, says, upon information and belief, that the said promise, contract, and agreement and trust and marriage settlement in said bill mentioned and particularly set forth, mentioned, or referred to in the 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of said bill, and therein alleged to have been made and entered into by the defendant, Azor H. Nickerson, and the complainant was not, nor was any such promise, contract, or agreement, or trust, or marriage settlement, nor was any memorandum or note thereof, either expressing or not expressing the consideration, reduced into writing and signed, subscribed, or executed by the defendant, Azor H. Nickerson, or by any other person by him lawfully authorized; nor was the same or any memorandum or note thereof reduced into writing and signed, subscribed, or executed pursuant to the law in force in

this District, as stated in the answer of this defendant heretofore
117 filed, nor pursuant to the said law of the State of Oregon or to the said sections of said act passed in said State of Oregon as aforesaid; and this defendant therefore insists that the same is void as against the defendant, Azor H. Nickerson, and as against this defendant, and that no action can be brought whereby to charge the said defendant, Azor H. Nickerson, or to charge this defendant upon the same, and that this defendant cannot be affected thereby; and, inasmuch as the complainant claims that an estate or interest in real property or a trust or power concerning such property was created, transferred, or declared, as alleged in the bill of complaint, it is incumbent upon her, the complainant, to show that the same was created, transferred, or declared by operation of law or by a conveyance or other instrument in writing subscribed by the said defendant, Azor H. Nickerson, or by his lawful agent under written authority and executed with such formalities as are required by law, and this defendant says that the same was not and cannot be shown to have been so created, transferred, or declared, as this defendant is informed and believes; and, inasmuch as the complainant claims that an agreement between her and the defendant, Azor H.
118 Nickerson, was made with her, the complainant, upon consideration of marriage other than a mutual promise to marry, and which by its terms was not to be performed within a year from the making thereof, and which was for the sake of real property or of an interest therein, as alleged in the bill of complaint, it is incumbent upon her (the complainant) to show that the same or some note or memorandum thereof expressing the consideration was in writing and subscribed by the said defendant, Azor H. Nickerson, or by his lawfully authorized agent, and this defendant says that nothing of the sort was done and that nothing of the sort can be shown by the complainant, as this defendant is informed and believes; and this defendant further says that by reason of the law in such case made and provided no evidence of such an agreement should be received other than the writing itself, under the circumstances of this case.

And this defendant denies that any of the requirements of the law of the State of Oregon or of the law of this District or of any of said statutes in such case made and provided have been complied with; and this defendant claims the same benefit as if she had pleaded the same laws of the State of Oregon and the same sections of said act passed in said State of Oregon as aforesaid, as well
119 as the laws in force and in such case made and provided in the District of Columbia; and this defendant, for the reasons and under the circumstances set forth in her answer heretofore filed in this cause and in this amendment thereto, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint, and this defendant asks that she may have the full benefit of all objections to the said bill, and that she may have the same advantage and benefit from her said answer and this amendment thereto as though she had specially demurred to said bill of com-

plaint; and, having fully answered the same, she prays to be hence dismissed with her reasonable costs in this cause incurred.

LENA D. CARTER.

HENRY WISE GARNETT &
CONWAY ROBINSON, JR.,
Sol'rs for Defend't, Lena D. Carter.

DISTRICT OF COLUMBIA, *ss:*

I, Lena Diller Carter, being first duly sworn according to law, do solemnly swear that I have read the foregoing amendment to my answer in the above-entitled cause, No. 9027, brought by Emma
120 C. D. Nickerson, as complainant, against myself and others, as defendants, which amendment to my said answer is by me subscribed; and I do further solemnly swear, upon oath as aforesaid, that I am the defendant, Lena Diller Carter, named in said amendment, and that I know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

LENA DILLER CARTER.

Subscribed and sworn to before me this 10th day of December, A. D. 1885.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

Leave is hereby granted, this 16th day of December, A. D. 1885, by the court to the defendant, Lena Diller Carter, to file this amendment to her answer heretofore filed by her in this cause, with leave to the complainant to plead or demur thereto as she may be advised.

A. B. HAGNER.

121 *Answer of Wm. D. Matthews. Filed Sept.* 13, 1884.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA DILLER CARTER, Defendants. } No. 9027.

The separate answers of the defendant, William B. Matthews, to the bill of complaint in the above-entitled cause.

This defendant, saving and reserving all and all manner of exceptions to said bill for and on account of its manifold errors and imperfections, &c., nevertheless, for answer to the same, or to so much as he is advised it is proper that he should answer, answering, says:

1st. In answer to the first paragraph of said bill this defendant says that it is not true that the complainant is a resident of the city

of Washington, in the District of Columbia; that he is informed and believes that she has resided in Europe for over two years last past, and that she remained there until she recently returned to this country.

That this defendant has for several years past lived in this
122 District, but he claims his citizenship in the State of Virginia; that the defendant, Lena Diller Carter, is a resident of said District, as this defendant is informed and believes; and this defendant is informed and believes that the defendant, Azor H. Nickerson, has, and for a long time past has, had his domicil in the State of Pennsylvania.

And this defendant has no knowledge of the defendant, Azor H. Nickerson, being a fugitive from justice, and this defendant calls for strict proof of the allegation in the bill relative thereto.

2nd. In answer to the second paragraph of the bill this defendant says that although he has no reason to doubt that the complainant and the defendant, Azor H. Nickerson, were married, yet he has no knowledge of the fact that they ever were lawfully married, nor has he any knowledge of the time when the complainant and the defendant, Azor H. Nickerson, were married, nor does he know that the complainant has been the lawful wife of said Azor H. Nickerson ever since the 13th day of August, 1870. He is informed and believes that since the date last above mentioned the said Azor H. Nickerson obtained a decree of divorce from said complainant, and that for a while since that date the complainant has not been
123 the lawful wife of the said Azor H. Nickerson.

3rd, 4th, & 5th. In answer to the third, fourth, and fifth paragraphs of the bill this defendant says that he has no knowledge of the matters and things and facts therein stated and of the allegations therein made, and is not able, therefore, to either admit or deny them, but calls for strict proof of everything contained in said paragraphs.

This defendant has no knowledge of the said Azor H. Nickerson owning at all any property or lots in the city of Portland, Oregon, although this defendant has frequently been informed that he owned property in one or two of the Western Territories, and recently that he still owned property in Washington Territory that might be very valuable in the future.

Nor has this defendant any knowledge of any promise, agreement, or understanding whatever between the complainant and the said Azor H. Nickerson relative to his conveying any lots in Portland, Oregon, to the complainant as a marriage settlement or otherwise, or of his promising or agreeing to hold any property as trustee for her separate benefit, or of his promising or agreeing that if the same should be sold the proceeds should be invested in other property to be held in that manner for her separate benefit, or of his
124 promising or agreeing that when such property or any other lots purchased in lieu thereof should be finally sold the proceeds arising therefrom should be invested in the name of and for the sole and separate benefit of the complainant and her children. Nor has this defendant any knowledge of the said Azor H. Nicker-

son ever having held any property for the sole and separate benefit of the complainant or as her trustee under any agreement, promise, or consideration whatever.

And of all these allegations and the other allegations contained in the 3rd, 4th, & 5th paragraphs of said bill this defendant calls for strict proof; and he is advised by counsel that even were the same true (which he has every reason to doubt) they would constitute no cause of action such as is attempted to be enforced in this suit; and this defendant says he does not see how the complainant could have seen from the consideration mentioned in said deeds (which she alleges was $12,000.00) that the said lots had sufficiently advanced in value to accomplish the alleged object for which she states the said lots had been purchased and to carry out the provisions of the alleged trust set forth by her or been from the amount of said consideration persuaded that the said Azor H. Nickerson was
125 going to consummate any alleged promise or agreement, for the complainant herself states in the same breath that she executed and returned said deeds to the said Azor H. Nickerson on different dates, to wit, on the 26th of November, 1881, and the 2nd of December, 1881, and the 10th of January, A. D. 1882, and she could not therefore have known the total consideration when she executed and returned the first deeds.

6th. This defendant, in answer to the sixth paragraph of the bill, says that he has no knowledge, as before stated, of the defendant, Azor H. Nickerson, having bought, owned, or sold any lots in Portland, Oregon, and if he did sell any such lots this defendant cannot say what he received from the purchases of said lots or what sum the purchase-money thereof amounted to in the aggregate. This defendant says that the first intimation he had of the intended purchase by the said Azor H. Nickerson of the part of lot two, in square 114, in the city of Washington, D. C. (being No. 7 Dupont Circle), which is particularly described in the bill, and of the reasons that actuated the said Azor H. Nickerson in purchasing the same was derived from the said Nickerson himself. The said Nickerson sent for this defendant just previous to the purchase and requested
126 him to give his opinion as to the value of the property.

This defendant did so, and, the price being agreed on, the purchase was consummated at the price alleged in the complainant's bill.

The said Azor H. Nickerson then stated to this defendant that as he was an army officer, subject at all times to orders from the War Department, and as he had been on duty in this city for a number of years, he thought it more than probable that he would be ordered and would have to go to the far West, and he wanted to have this property conveyed to this defendant in trust, so that if after going West it was necessary or desirable for him to sell and convey the same he could do so by simply writing a letter requesting the sale and conveyance to be made, as is provided for in the trust deed. He stated that he had the most implicit confidence in this defendant, and would rather have him act as trustee than any other person, and, believing this to be the case, this defendant consented

to act as trustee; that the said deed, bearing date on the 13th day of June, 1882, and duly recorded on the 16th day of June, A. D. 1882, in liber No. 1009, folio 162, *et seq.*, one of the land records of the District of Columbia, was accordingly made by Thomas Sheridan *et ux.* to this defendant, as trustee for said Azor H. Nickerson, upon the
127 terms, conditions, and trusts in said deed set forth and contained; all of which will more fully and at large appear by the said record thereof, to which said record reference is hereby expressly made, and the same is prayed to be taken as a part of this answer; and this defendant says that it is absolutely false and untrue that the defendant, Azor H. Nickerson, ever wrongfully and fraudulently and with the intent and view of carrying out a conspiracy formed with this defendant and the defendant, Lena Diller Carter, expended the said sum of $8,380.00 or any sum in the purchase of said lot last above mentioned or of any lot or property whatsoever. It is absolutely false and untrue that this defendant ever entered into or formed any conspiracy whatsoever with the said Azor H. Nickerson and Lena Diller Carter or with either of them or with any person whomsoever for the purpose of defrauding the complainant or for the purpose of depriving her of any benefit of any trust fund or estate or for any purpose whatever, and he is informed and believes that no such conspiracy was ever entered into by his codefendants or any one else; and this defendant says that, so far as he is informed and believes and as far as he knows, the said deed last above mentioned was made to this defend-
128 ant in trust as aforesaid without any intent on the part of said Azor H. Nickerson or of any one else to defraud the complainant or said child or any other person. This defendant is informed and believes that the money invested in said property last above mentioned or expended in the purchase thereof was not a trust fund in the hands of said Azor H. Nickerson belonging to and subject to the disposal of the complainant or upon which she or her child or children had any claim or in which she or they had any interest whatsoever, but was money which he had a perfect right to use and invest as he pleased. This defendant did not see the purchase-money for said property last above mentioned paid to the vendor, Thomas Sheridan, nor does he know positively where the purchase-money was derived from with which the said Azor H. Nickerson purchased the said property on Dupont Circle last above mentioned, but he does know in regard to that matter that the said Azor H. Nickerson was a large operator in stocks, and this defendant heard him say that he had been losing heavily for some time past, and that he intended to draw out what he had remaining and invest the same in this real estate; and this defendant further
129 states that on or about the 4th day of January, 1882, the said defendant, Azor H. Nickerson, received the further sum of sixteen hundred dollars ($1,600.00) in cash, the same being the proceeds of the sale of a lot of ground in the city of Washington, D. C., which he had bought subject to a deed of trust and sold subject to the same deed of trust, in which sum of $1,600.00 the complainant had no interest whatsoever; all of which will more fully and at large

appear by reference to the third paragraph of the answer of this defendant, William B. Matthews, filed to the original bill in cause No. 8613 in this honorable court, which reference is hereby made, and the same is prayed to be taken as a part of this answer so far as it relates to the said sale and purchase.

7th. In answer to the seventh paragraph of the bill this defendant says that it is utterly untrue and false that he at any time whatever entered into any conspiracy with the defendant Nickerson and the defendant, Lena Diller Carter, or with either of them or with any one else, or that such conspiracy was ever formed; and he says it is absolutely false and untrue that he ever entertained the purpose of defrauding the complainant in any way whatever, or of depriving her of any right, title, or interest in, to, of, or out of
130 any property whatever, or of defrauding or depriving her of the proceeds thereof, or of diverting the same from her benefit; and he further says, as he has before stated, that he never heard until he saw it stated in the original bill in cause No. 8613 in this court that the defendant, Azor H. Nickerson, owned or ever had owned any lots or property in Portland, Oregon; and he further says that he never met or conversed with or communicated with the defendant, Lena Diller Carter, until the 2nd day of April, A. D. 1883, when he was introduced to her for the first time; that it is false and untrue that this defendant in any way encouraged, advised, or suggested the departure of the complainant for Europe in the month of July, in the year 1880, or at any other time whatever, and he did not know that the complainant intended to go or had gone to Europe until some time after she had left this country for Europe, and this defendant had never seen, known, or heard of said Azor H. Nickerson until long after the complainant had left for and been in Europe. This defendant is informed and believes that the complainant was in Europe in the year 1881, and that she had left her husband and gone to Europe several years ago; but this
131 defendant is not informed and does not believe that she went there by the advice or direction of her husband or in accordance with his wishes. As to her views of economy and her hopes and desires and as to the circumstances connected with her departure for Europe this defendant has no knowledge, and he calls for strict proof of the same.

That the defendant, Azor H. Nickerson, did not go to the city of Philadelphia, in the State of Pennsylvania, for the purpose of acquiring a pretended residence in said city with the knowledge and consent and at the instigation of this defendant, and such allegation in the bill is wilfully and maliciously false, and all that this defendant can say upon that subject he has already said in the proceedings in cause No. 8613 in this court, and he hereby refers to what he has there said relative thereto as a part of this answer. This defendant says that it is true that the defendant, Azor H. Nickerson, on or about the 2nd day of May, 1882, did file a bill or libel against the complainant in one of the courts of the city of Philadelphia, in the State of Pennsylvania, for a divorce from the said complainant on the ground of desertion, and that he did, on or about the 31st

day of March, 1883, obtain a divorce from the complainant in
132 said suit; but this defendant is informed and believes (and as far as this defendant is himself concerned he knows) that the same was not done to consummate any or with any fraudulent intent nor to deprive the complainant or said child of any share or interest in said property or in any property or in the proceeds thereof. This defendant has no knowledge of any false and scandalous allegations having been made in said bill or libel, nor has he any knowledge that said decree was obtained by means of fraud or perjury or subornation of perjury, and does not believe such was the case; and this defendant knows that just a short time before said Azor H. Nickerson obtained said decree of divorce from the complainant he insured his life for the benefit of his said child and had made other liberal provisions for her maintenance and support; and this defendant emphatically states that said suit was not instituted or said decree obtained through any conspiracy with this defendant whatever or at his instigation, and he is informed and believes that there was no conspiracy between any persons whomsoever, and that neither this defendant nor any one else attempted thereby to defraud the complainant or said child. This defend-
133 ant again states that he has no knowledge of any trust funds having been used in the purchase of said house and premises (No. 7 Dupont Circle), and so far as he is informed and believes that no such trust funds were so used. T[illegible]'s defendant says that it is true that the said defendants, Azor H. Nickerson and Lena Diller Carter, were married on the 2nd day of April, A. D. 1883, and he states that he is informed and believes they contracted said marriage in perfect good faith, and he says that it is altogether false and untrue that this defendant was in any conspiracy with them or either of them or with any one in regard to said marriage; nor was said marriage contracted or consummated in pursuance of any conspiracy with this defendant whatsoever; nor did this defendant have any acquaintance with the said Lena Diller Carter prior to his meeting her on the 2nd day of April, 1883, when he was introduced to her for the first time. This defendant says that the said lot 2, in sq. 114 (being No. 7 Dupont Circle), was conveyed to this defendant, as this defendant has before stated, and he here repeats what he has before stated relative thereto. He emphatically denies that
134 the same was conveyed to this defendant as a step in any conspiracy, as alleged, or in pursuance of any conspiracy whatsoever with this defendant; nor did this defendant consent that said real estate and premises should be conveyed to him in trust as the same is conveyed in said deed in order to defraud or aid in defrauding the complainant; nor did this defendant accept said trust to defraud or to render it more easy to defraud the complainant or to divert any alleged trust funds from their proper use.

This defendant has never, indeed, heard of any trust funds or marriage settlement or separate estate to which the complainant was or claimed to be entitled until she filed her said bill No. 8613, in equity, in this court making such allegations; and this defendant never knew that any of the said transactions were of a fraudu-

lent character, nor does he believe that they were, and he emphatically denies that they were, so far as he knows or is concerned, and he says that it is positively untrue that he ever knowingly aided or abetted in any conspiracy, as alleged, or ever did so at all or knew of such conspiracy.

This defendant admits that the defendant, Azor H. Nickerson, on the 31st day of May, A, D. 1883, by an instrument of writing signed by him, requested and directed this defendant to transfer and
135 convey to the said defendant, Lena Diller Carter, all his, the said Nickerson's, right to said lot two, in square 114, hereinbefore mentioned; and this defendant admits that he made and executed to the defendant, Lena Diller Carter, by the name of Lena Carter Nickerson, a deed of conveyance of the property last above mentioned, being house No. 7 Dupont Circle, and that he did so in obedience to said written request and direction as provided for in said deed of trust, as was his duty under the terms and provisions of said deed of trust, as and all of this was done in perfect good faith and not with any intent to defraud the complainant and not in pursuance of or as a part of any conspiracy or with any knowledge of any conspiracy against the complainant or against any one whomsoever; all of which will more fully and at large appear by the record of said request and direction in writing and by the record of said deed, which are recorded together in liber No. 1042, folio 428, *et seq.*, one of the land records of said District, to which said records reference is hereby made, and the same are prayed to be taken as a part of this answer.

This defendant admits that the said Azor H. Nickerson executed to the said Lena Diller Carter, by the name of Lena Carter Nickerson, a bill of sale of all of said personal property in said
136 house numbered 7 Dupont Circle and all of his personal property in the city of Washington of every kind and description, and at the same time delivered possession to the said defendant, Lena Diller Carter, of all said personal property and real estate, which possession she has held and still holds; and this defendant is informed and believes that she has a right to the same, and that the transfers to her were good and valid. A copy of said bill of sale was heretofore filed in said cause No. 8613, in equity, in this court, which is hereby referred to and prayed to be taken as a part of this answer.

And this defendant has no knowledge of any fraudulent acts having been practiced by the said Azor H. Nickerson or by the said Lena Diller Carter or of their having entered into any conspiracy, and this defendant denies all the charges of fraud and conspiracy which have been made against this defendant in said bill, and again says that all of said charges are utterly false and untrue, and that the averment and charge by the complainant that there is or has been a conspiracy between the defendants, A. H. Nickerson, Lena Diller Carter, and this defendant—

First. To get the complainant abroad and out of the reach
137 of and knowledge of what was going on, is false and altogether untrue; and this defendant again states that he had no

knowledge of complainant's intention to go abroad or that she had gone abroad, nor did he know her or even know Azor H Nickerson until long after she had been in Europe, and he never knew the defendant, Lena Diller Carter, or communicated with her or conversed with her until the 2nd day of April, 1883, as this defendant has before stated, and does not yet know the complainant.

Second. That the said A. H. Nickerson was to procure a divorce from the complainant with the knowledge and connivance of the defendant, Lena Diller Carter, and this defendant is equally false and untrue.

Third. This defendant did not know that the defendant, Azor H. Nickerson, had or that he had disposed of any or proposed to dispose of any of the property in Oregen mentioned in the bill or any property in which the complainant had any interest, and it is false that said defendant Nickerson was to put it in the hands of this defendant as a co-conspirator so as to avoid any rights or trusts of said complainant; and this defendant never knew and does not know that the complainant had or has any interest in or claim upon the same.

138 Fourth. This defendant never entered into any conspiracy looking to or with a view to the marriage of the defendants, Lena Diller Carter and Azor H. Nickerson, nor was the marriage between the said parties contracted with a view to depriving the complainant of any property or interest in property, so far as this defendant is aware.

Fifth. Nor did this defendant ever enter into any conspiracy with the said Azor H. Nickerson and Lena Diller Carter that said Nickerson should convey or cause to be conveyed all his property to the said Lena Diller Carter, and he is informed and believes that he has not conveyed all his property to said Lena Diller Carter, and he believes that what said Nickerson did convey or cause to be conveyed to her was the result of unforeseen circumstances and events, and certainly this defendant did not anticipate anything of the kind.

8th. In answer to the 8th paragraph of the bill this defendant says that he does not know whether the defendant, Lena Diller Carter, is insolvent or not, nor does he know whether she has any other property or not. This defendant denies the other allegations contained in said eighth paragraph, and he further says, in reply thereto, that he is not advised as the complainant says he is advised, but that he is advised exactly to the contrary.

139 9th. This defendant admits the ninth paragraph of the bill, or at least has no reason to doubt the same.

10th. In answer to the interrogatories propounded by the complainant to this defendant in the prayers to said bill to which the complainant prays that answers may be made by this defendant, expressly waiving oath to such answers, this defendant says that he is informed and advised by counsel that the complainant cannot require answer from this defendant to any interrogatories unless she demand that the same be answered under oath.

Second. That the interrogatories propounded by the complainant to this defendant are not properly propounded and are improper and

irrelevant and are not such interrogatories as she can or is entitled to require this defendant to make answer to, and this defendant is ready to answer all proper interrogatories when the same shall be propounded to him by the complainant according to law and in a manner in which he will be under obligations to make answer to the same.

And this defendant says that the complainant has been guilty of such laches that even if there were any foundation for her
140 claim, which, so far as he knows or is informed and believes, he denies, yet she could not now, after such laches, enforce the same in this honorable court, and he asks the full benefit of her laches.

And this defendant, further answering upon information and belief, says that the said promise, contract, and agreement in the said bill mentioned and particularly set forth, mentioned, or referred to in the 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of said bill and therein alleged to have been made and entered into by said defendant, Azor H. Nickerson, and the complainant was not nor was any such promise, contract, or agreement nor was any memorandum or note thereof reduced into writing and signed or executed by said defendant, Azor H. Nickerson, or by any other person thereunto by him, the said Azor H. Nickerson, lawfully authorized, nor was the same or any memorandum or note thereof reduced into writing and signed or executed pursuant to the statute in such case made and provided, commonly called the statute of frauds or the statute of frauds and perjuries, and this defendant claims the same benefit as if he had pleaded in this cause the same statute—that is to
141 say, the statute commonly called the statute of frauds or the statutes of frauds and perjuries, which is in full force and effect in this District; and this defendant, for the reasons and under the circumstances aforesaid, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint, and this defendant asks that he may have the full benefit of all objections to the said bill, and that he may have the same advantage and benefit from this answer as though he had specially demurred to said bill of complaint; and, having fully answered the same, he prays to be hence dismissed with his reasonable costs in this cause incurred.

W. B. MATTHEWS.

142 DISTRICT OF COLUMBIA, *ss:*

I, William B. Matthews, being first duly sworn, depose and upon oath say that I do solemnly swear that I have read the aforegoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WM. B. MATTHEWS.

Subscribed and sworn to before me this 13 day of September, 1884.

N. D. ADAMS,
Notary Public, D. C.

Exceptions to the Answer of Def't, W. D. Matthews. Filed Sept. 17, 1884.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } Equity No. 9027.

And now comes the complainant, by her solicitors, and file- the following exceptions to the answer of the defendant, William B. Matthews:

For that the said defendant, William B. Matthews, has not
143 answered the several matters and things inquired about in the interrogatory contained in the bill of complaint herein propounded to said defendant specially nor of his information and belief thereof, nor has he pretended to answer to said matters and things inquired about, but has confined his answer exclusively to the said matters and things alleged and charged in said bill without setting forth the subject-matters inquired about in said interrogatory; in all of which particulars the said complainant excepts to the said answer of the said William B. Matthews as evasive, imperfect, and insufficient, and hereby prays that the said defendant, William B. Matthews, may be compelled to put in full and sufficient answer thereto.

J. J. JOHNSON & W. W. WILSHIRE,
Solicitors for Complainant.

144 *Decree Overruling Complainant's Exceptions to Def'ts' Answer. Filed Oct.* 20, 1884.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Compl't,
vs.
AZOR H. NICKERSON *et al.*, Def't's. } No. 9027.

This cause coming on to be heard upon complainant's exceptions to the answers of the defendants, respectively, in the above-entitled cause, and all of the papers and proceedings in said cause having been read and considered by the court and said cause having been argued by the counsel for the complainant and for the defendants, respectively, it is, this 20th day of October, A. D. 1884, upon consideration thereof by the court, hereby ordered, adjudged, and decreed that all of said exceptions filed by said complainant to said answers of said defendants and to each of said answers of said defendants, respectively, be, and the same are hereby, overruled and for nothing held, and leave is hereby granted to the complainant to file replications to said answers of said defendants within five days from the date hereof.

By the court:

W. S. COX, *J.*

145 *Amended Answer of Wm. B. Matthews. Filed Dec.* 16, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, LENA DILLER CARTER, Defendants. } No. 9027.

Now comes the defendant, William B. Matthews, and, by leave of the court first had and obtained, files the following as an amendment to the answer heretofore filed by him to the bill of complaint in the above-entitled cause:

This defendant, further answering the bill of complaint, and as an amendment to and part of her answer to the same, says that by the law of the State of Oregon and by sections 771 and 775 of an act passed in said State, it provides that (section 771) "no estate or interest in real property other than a lease for a term not exceeding one year nor any trust or power concerning such property can be created, transferred, or declared otherwise than by operation of law or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by
146 his lawful agent, under written authority, and executed with such formalities as are required by law," and that (section 775) "in the following cases the agreement is void unless the same or some note or memorandum thereof expressing the consideration be in writing and subscribed by the party to be charged or by his lawfully authorized agent; evidence, therefore, of the agreement shall not be received other than the writing or secondary evidence of its contents in the cases prescribed by law:"

"1. An agreement that by its terms is not to be performed within a year from the making thereof."

"4. An agreement made upon consideration of marriage other than a mutual promise to marry."

"6. An agreement for the leasing for a longer period than one year or for the sale of real property or of any interest therein."

"7. An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing."

And this defendant, further*ing* answering, says that at the time the defendant, Azor H. Nickerson, became engaged to marry the complainant, and at the time that said defendant, Azor H. Nick-
147 erson, did marry the complainant, and for a long time prior to his said marriage with the complainant, and prior to the time when he first became engaged to marry the complainant, and from that time until the institution of this suit, the said law of the State of Oregon and said section of said act passed in said State as aforesaid remained and continued to be in full force and effect; and this defendant, further answering, says, upon information and belief, that the said promise, contract, and agreement and trust and mar-

riage settlement in said bill mentioned, and particularly set forth, mentioned, or referred to in the 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of said bill, and therein alleged to have been made and entered into by the defendant, Azor H. Nickerson, and the complainant, was not, nor was any such promise, contract, or agreement or trust or marriage settlement, nor was any memorandum or note thereof, either expressing or not expressing the consideration, reduced into writing and signed, subscribed, or executed by the defendant, Azor H. Nickerson, or by any other person by him lawfully authorized; nor was the same or any memorandum or note thereof reduced into writing and signed, subscribed,
148 or executed pursuant to the law in force in this District, as stated in the answer of this defendant heretofore filed, nor pursuant to the said law of the State of Oregon or to the said sections of said act passed in said State of Oregon as aforesaid; and this defendant therefore insists that the same is void as against the defendant, Azor H. Nickerson, and as against this defendant, and that no action can be brought whereby to charge the said defendant, Azor H. Nickerson, or to charge this defendant upon the same; and that this defendant cannot be affected thereby; and, inasmuch as the complainant claims that an estate or interest in real property or a trust or power concerning such property was created, transferred, or declared as alleged in the bill of complaint, it is incumbent upon her, the complainant, to show that the same was created, transferred, or declared by operation of law or by a conveyance or other instrument in writing subscribed by the said defendant, Azor H. Nickerson, or by his lawful agent, under written authority and executed with such formalities as are required by law; and this defendant says that there was not and cannot be shown to have been so
149 created, transferred, or declared —, as this defendant is informed and believes.

And, inasmuch as the complainant claims that an agreement between her and the defendant, Azor H. Nickerson, was made with her, the complainant, upon consideration of marriage other than a mutual promise to marry, and which by its terms was not to be performed within a year from the making thereof, and which was for the sale of real property or of an interest therein, as alleged in the bill of complaint, it is incumbent upon her (the complainant) to show that the same or some note or memorandum thereof expressing the consideration was in writing and subscribed by the said defendant, Azor H. Nickerson, or by his lawfully authorized agent; and this defendant says that nothing of the sort was done and that nothing of the sort can be shown by the complainant, as this defendant is informed and believes; and this defendant further says that by reason of the law in such case made and provided no evidence of such an agreement should be received other than the writing itself under the circumstances of this case; and this defendant denies that any of the requirements of the law of the State of Oregon or of the law of this District or of any of said statutes in
150 such case made and provided have been complied with, and this defendant claims the same benefit as if he had pleaded

the same laws of the State of Oregon and the same sections of said act passed in said State of Oregon as aforesaid, as well as the laws in force and in such case made and provided in the District of Columbia; and this defendant, for the reasons and under the circumstances set forth in this defendant's answer heretofore filed in this cause, and for the reasons and under the circumstances set forth in this amendment thereto, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint, and this defendant asks that he may have the full benefit of all objections to the said bill, and that he may have the same advantage and benefit from his said answer and this amendment thereto as though he had specially demurred to said bill of complaint, and, having fully answered the same, he prays to be hence dismissed with his reasonable costs in this cause incurred.

W. B. MATTHEWS, *P. P.*

151 DISTRICT OF COLUMBIA, *ss:*

I, William B. Matthews, being first duly sworn according to law, do solemnly swear that I have read the aforegoing amendment to my answer in the above-entitled cause, No. 9027, brought by Emma C. D. Nickerson, as complainant, against myself and others as defendants, which amendment to my said answer is by me subscribed, and I do further solemnly swear upon oath as aforesaid that I am the defendant, William B. Matthews, named in said amendment, and that I know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WM. B. MATTHEWS.

Subscribed and sworn to before me this 9th day of December, A D. 1885.

N. D. ADAMS,
Notary Public, D. C.

Leave is hereby granted this 16th day of December, A. D. 1885, by the court to the defendant, Wm. B. Matthews, to file this amendment to his answer heretofore filed by him in this cause, with leave to the compl't to plead or demur thereto, as she may be advised.

A. B. HAGNER.

152 *Amended Answer of A. H. Nickerson. Filed Dec.* 16, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA DILLER CARTER, Defendants. } No. 9027.

Now comes the defendant, Azor H. Nickerson, and, by leave of the court first had and obtained, files the following as an amendment to

the answer heretofore filed by him to the bill of complaint in the above-entitled cause:

This defendant, further answering the bill of complaint and as an amendment to and part of his answer to the same, says that by the law of the State of Oregon and by sections 771 and 775 of an act passed in said State it is provided that (section 771) "no estate or interest in real property other than a lease for a term not exceeding one year nor any trust or power concerning such property can be created, transferred, or declared otherwise than by operation of law or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful
153 agent, under written authority, and executed with such formalities as are required by law," and that (section 775) "in the following cases the agreement is void unless the same or some note or memorandum thereof expressing the considerations be in writing and subscribed by the party to be charged or by his lawfully authorized agent; evidence, therefore, of the agreement shall not be received other than the writing or secondary evidence of its contents in the cases prescribed by law:"

"1. An agreement that, by its terms, is not to be performed within a year from the making thereof."

"4. An agreement made upon consideration of marriage other than a mutual promise to marry."

"6. An agreement for the leasing for a longer period than one year or for the sale of real property or of any interest therein."

"7. An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing."

And this defendant, further answering, says that at the time that he became engaged to marry the complainant, and at the
154 time that this defendant did marry the complainant, and for a long time prior to his said marriage with the complainant, and prior to the time when he first became engaged to marry the complainant, and from that time until the institution of this suit, the said law of the State of Oregon and said sections of said act passed in said State as aforesaid remained and continued to be in full force and effect; and this defendant, further answering, says that the said promise, contract, and agrement and trust and marriage settlement in said bill mentioned, and particularly set forth, mentioned, or referred to in the 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of said bill, and therein alleged to have been made and entered into by this defendant and the complainant, was not, nor was any such promise, contract, or agreement or trust or marriage settlement, nor was any memorandum or note thereof, either expressing or not expressing the consideration, reduced into writing and signed, subscribed, or executed by this defendant or by any other person by this defendant lawfully authorized; nor was the same or any memorandum or note thereof reduced into writing and signed, subscribed, or executed pursuant to the law in force in this
155 District, as stated in the answer of this defendant heretofore filed, nor pursuant to the said law of the State of Oregon or

to the said sections of said act passed in said State of Oregon as aforesaid; and this defendant therefore insists that the same is void as against this defendant, and that no action can be brought whereby to charge this defendant upon the same, and that this defendant cannot be affected thereby; and, inasmuch as the complainant claims that an estate or interest in real property or a trust or power concerning such property was created, transferred, *to* declared as alleged in the bill of complaint, it is incumbent upon her to show that the same was created, transferred, or declared by operation of law or by a conveyance or other instrument in writing subscribed by this defendant or by his lawful agent, under written authority, and executed with such formalities as are required by law; and this defendant says that the same was not and cannot be shown to have been so created, transferred, or declared; and, inasmuch as the complainant claims that an agreement between her and this defendant was made with her upon consideration of marriage other than a mutual promise to marry, and which by its terms was not to be per-
156 formed within a year from the making thereof, and which was for the sale of real property or of an interest therein, as alleged in the bill of complaint, it is incumbent upon her to show that the same or some note or memorandum thereof expressing the consideration was in writing and subscribed by this defendant or by his lawfully authorized agent; and this defendant says that nothing of the sort was done, and that she cannot show that anything of the sort was done; and this defendant further says that, by reason of the law in such case made and provided, no evidence of such an agreement should be received, other than the writing itself, under the circumstances of this case; and this defendant denies that any of the requirements of the law of the State of Oregon or of the law of this District in such case made and provided have been complied with; and this defendant claims the same benefit as if he had pleaded the same law of the State of Oregon and the same sections of said act passed in said State of Oregon as aforesaid, as well as the said laws in force upon the subject in the District of Columbia.

And this defendant, for the reasons and under the circum-
157 stances set forth in his answer heretofore filed in this cause and in this amendment thereto, is advised and insists that the said complainant is not entitled to any relief against this defendant touching the matters complained of in the said bill of complaint, and this defendant asks that he may have the full benefit of all objections to the said bill, and that he may have the same advantage and benefit from his said answer and this amendment thereto as though he had specially demurred to said bill of complaint, and, having full answered the same, he prays to be hence dismissed with his reasonable costs in this cause incurred.

A. H. NICKERSON.
By E. T.

ENOCH TOTTEN,
Sol'r for Defendant, Azor H. Nickerson.

ONTARIO, *Canada, ss:*

UNITED STATES CONSULATE AT ST. CATHARINES.

I, Azor H. Nickerson, being first duly sworn according to law, do solemnly swear that I have read the aforegoing amend-
158 ment to my answer in the above-entitled cause No. 9027, brought by Emma C. D. Nickerson, as complainant, against myself and others, as defendants, which amendment to my said answer is by me subscribed; and I do further solemnly swear upon oath as aforesaid that I am the defendant, Azor H. Nickerson, named in said amendment, and that I know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

AZOR H. NICKERSON.

Subscribed and sworn to before me this 11th day of December, A. D. 1885.

L. H. COLLARD,
U. S. Consular Ag't.

Leave is hereby granted this 16th day of December, A. D. 1885, by the court to the defendant, Azor H. Nickerson, to file this amendment to his answer heretofore filed by him in this cause, with leave to the com't to plead or demur thereto as she may be advised.

By the court:

A. B. HAGNER.

159 *Replication to Answers. Filed Oct.* 25, 1884.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } Equity No. 9027.

The complainant joins issue upon the answers of the defendants in the above-entitled cause.

J. J. JOHNSON,
Sol'r for Compl't.

Motion for Security for Costs. Filed Jan'y 21, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry

Wise Garnett and Conway Robinson, Jr., her solicitors, and now comes also the defendant, William B. Matthews, in proper person, and they and each of them, jointly and separately, hereby move
160 the court in the above-entitled cause for an order directing and requiring the complainant, Emma C. D. Nickerson, to give security for costs in this cause within such time as the court shall think proper according to the statute in such case made and provided or else have her bill of complaint dismissed by the court, she, the complainant, being a non-resident of the District of Columbia.

ENOCH TOTTEN, *For A. H. N.*
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

Affidavit of W. B. Matthews in Support of Motion for Security for Costs.
Filed Jan'y 21, 1885.

DISTRICT OF COLUMBIA, *ss:*

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

I, William B. Matthews, one of the defendants in the above-entitled cause, being first duly sworn according to law, deposes
161 and says that the complainant, Emma C. D. Nickerson, came to the District of Columbia temporarily at the time that she filed the bill of complaint in this cause or shortly prior thereto and about that time, and that, to the best of his knowledge and belief after staying here a short time she left the District of Columbia and, has since resided elsewhere beyond the limits of said District; and this affiant further says that, to the best of his knowledge and belief, the said complainant, Emma C. D. Nickerson, has no permanent home or residence within the District of Columbia nor any home or residence whatsoever within said District at this time, nor has she had any for some time past, if she ever did, and that, to the best of his knowledge and belief, she, the said complainant, Emma C. D. Nickerson, is at present residing in San Francisco, in the State of California; and this affiant further states that said complainant's husband, Azor H. Nickerson, is not a resident of the District of Columbia, and that, to the best of this affiant's knowledge and
162 belief, her said husband, Azor H. Nickerson, is now living in Canada, and this affiant further states that since the filing of the bill of complaint in this cause the said complainant, Emma C. D. Nickerson, has filed in this cause heretofore, to wit, on December 8th, 1884, certain interrogatories to be propounded to herself, the

said Emma C. D. Nickerson, as a witness on her own behalf, in which it is stated that she, the said Emma C. D. Nickerson, is "at present residing in San Francisco, in the State of California."

WM. B. MATTHEWS.

Subscribed and sworn to before me a notary public in and for said District, this 21st day of January, A. D. 1885.

[SEAL.] N. D. ADAMS,
Notary Public.

163 *Order Requiring Complainant to Give Security for Costs. Filed Jan'y* 24, 1885.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } No. 9027.

This cause coming on to be heard on the motion by the defendants to require the complainant, Emma C. D. Nickerson, to give security for costs and having been heard and considered, it is, this 24th day of January, A. D. 1885, ordered that the complainant give bond, with sufficient sureties, to be approved by this court, in the penal sum of two hundred and fifty dollars to secure the costs in this cause, and that said bond be filed in this court within twenty-five days from this date.

W. S. COX, *J.*

164 *Exceptions by Def'ts to Interrogatories Propounded to Compl't. Filed Apr.* 3, 1885.

In the Supreme Court of the Dist. of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry Wise Garnett and Conway Robinson, Jr., her solicitors, and now comes also the defendant, William B. Matthews, in proper person, and they and each of them, jointly and separately, object to and except to the interrogatories propounded to Emma C. D. Nickerson as a witness on behalf of complainant, as hereinafter more particularly specified—that is to say, they and each of them, jointly and separately, object to and except to the 11th, 12th, 13th, 14th, 15th, 16th, 21st, 22d, 26th, 27th, 29th, and 30th interrogatories so propounded

to said witness, Emma C. D. Nickerson, and filed in the
165 above-entitled cause because they are and because each of them is leading.

The said defendants and each of them, jointly and separately, object to and except to each and all of the following of said interrogatories, namely, the 15th, 17th, 18th, 19th, 22d, 29th, 31st, 32d, 33d, 34th, 35th, 36th, 37th, and 38th, as being and as calling for what is and because the same are and because each of them is irrelevant, immaterial, and impertinent to the issue joined in this cause.

The said defendants and each of them, jointly and separately, object to and except to the interrogatory numbered 29 for the reason that and because the same calls for and attempts to prove and inquires about secondary evidence and about matters which are but secondary proof without first laying the proper foundation therefor; and, further, said defendants and each of them objects to and excepts to all and every answer or answers that may be made to each and all of the interrogatories hereinbefore specified.

ENOCH TOTTEN, *For A. H. N.*
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

166 *Exceptions by Def'ts to Interrogatories Propounded to Azor H. Nickerson. Filed Apr.* 3, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Compl't,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry Wise Garnett and Conway Robinson, Jr., her solicitors, and now comes also the defendant, William B. Matthews, in proper person, and they and each of them, jointly and separately, object to and except to the interrogatories propounded to Azor H. Nickerson in his examination-in-chief, as hereinafter more particularly specified—that is to say, they and each of them, jointly and separately, object to and except to the 4th, 5th, 10th, and 25th interrogatories so propounded to him and filed in the above-entitled cause because they are and because each of them is leading.

They and each of them, jointly and separately, object to
167 and except to each and all of the following of said interrogatories, namely, the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, and 27th, as being and as calling for what is and because the same are and because each of them is irrelevant, imma-

terial, and impertinent to the issue joined in this cause; and, further, said defendants and each of them object and except to all and every answer that may be made to each — all of the interrogatories hereinbefore specified.

ENOCH TOTTEN, *For A. H. N.*
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

Exceptions by Def'ts to Interrogatories Propounded to Celia D. Kenney.

In the Supreme Court of the Dist. of Col'a. In Equity.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Tot-
168 ten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry Wise Garnett and Conway Robinson, Jr., her solicitors, and now comes also the defendant, William B. Matthews, in proper person, and they and each of them, jointly and separately, object to and except to the interrogatories propounded to Celia D. Kenny, a witness called and examined on behalf of the complainant as hereinafter more particularly specified—that is to say, they and each of them, jointly and separately, object to and except to the 8th interrogatory so propounded to said witness for the reason that and because the same calls for and attempts to prove what has been heard by the witness from another person and what is only hearsay testimony; and the said defendants and each of them, jointly and separately, object to and except to each and all of the following of said interrogatories, namely, the 3d, 6th, 7th, 8th, 9th, 10th, 11th, 13th, 14th, 15th, 16th, and 17th, as being and as calling for what is
169 and because the same are and because each of them is irrelevant, immaterial, and impertinent to the issue joined in this cause; and, further, said defendants and each of them objects and excepts to all and every answer or answers that may be made to each and all of the interrogatories hereinbefore specified.

ENOCH TOTTEN, *For A. H. N.*
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

Exceptions by Complainant to Cross-Interrogatories. Filed Ap'r 4, 1885.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON. } Equity No. 9027.

The complainant's counsel, after reading over the cross-interrogatories to the interrogatories-in-chief to the witnesses, Azor H. Nickerson and Celia D. Kenny, enters objections to cross-interrogatories Nos. 5, 6, 7, 8, 10, and 11 propounded to the witness, Celia D. Kenny, because the same are, respectively, irrelevant, incompetent, and not in reply to the examination-in-chief; also objects to the cross-
170 interrogatories propounded to the defendant, Azor H. Nickerson, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 28, and 29, because said cross-interrogatories are irrelevant, inadmissable, incompetent, and not in reply to the examination-in-chief, and, if evidence at all, it is evidence-in-chief for defendant and not pertinent to the cross-examination.

J. J. JOHNSON,
Sol. for Complainant.

Order for Commission to Take Testimony. Filed Apr. 10, 1885.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } Equity. No. 9027.

It appearing to the court that due notice having been given to the counsel for the defendants that a motion for the appointment of examiners would be made on the 10th day of April, 1885, ordered that L. S. B. Sawyer, Esq., of San Francisco, California, be appointed an examiner to take the testimony of Celia D. Kenny and Emma C. D. Nickerson, and that L. H. Collard, U. S. consular agent, St.
171 Catherine's, Canada, be appointed to take the testimony of Azor H. Nickerson, and that the clerk of the court issue commissions to them, and the time for taking testimony in the above case on the part of complainant is limited to forty days from the 8th day of April, 1885.

CHAS. P. JAMES, *Justice.*

Order for Com'n to Issue to Take Testimony. Filed Oct. 10, 1885.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Compl't,
vs.
AZOR H. NICKERSON, WM. B. MATTHEWS, and LENA D. CARTER, Def'ts. } No. 9027.

It is, by consent of counsel for the complainant and for the defendants, respectively, ordered that Leonard H. Collard, United States consular agent at St. Catherine's, Canada, be, and he hereby is, by the court, on this 10th day of October, A. D. 1885, appointed an examiner and commissioner to take the testimony of Azor
172 H. Nickerson, a witness on behalf of the defendants, upon interrogatories and cross-interrogatories to be filed in this cause, and he is hereby authorized and empowered to take said testimony; and the clerk of this court is hereby ordered and directed, upon the filing of the interrogatories and cross-interrogatories aforesaid, to issue a commission, with the said interrogatories and cross-interrogatories thereto annexed, to the said Leonard H. Collard, United States consular agent at St. Catherine's, Canada, appointing him an examiner and commissioner and investing him with power and authority to examine said Azor H. Nickerson as a witness for the defendants in the above-entitled cause upon interrogatories annexed thereto as aforesaid.

By the court:

CHARLES P. JAMES, *Justice.*

I consent to the issuing of the above commission and appointment of the commissioner therein named.

J. J. JOHNSON,
Sol. for Complaina-t.

173 *Testimony of A. H. Nickerson. Filed May* 5, 1885.

DOMINION OF CANADA,
Province of Ontario, County of Lincoln:

I, Leonard H. Collard, United States consular agent at St. Catharine's, Canada, do hereby certify that I did, on the 29th and 30th days of April, A. D. 1885, cause Azor H. Nickerson, the witness named in the annexed commission, to come before me at St. Catharine's, Canada, and did there and then first administer an oath to said witness on the Holy Evangely of Almighty God to tell the truth, the whole truth, and nothing but the truth in the cause of Emma C. D. Nickerson *vs.* Azor H. Nickerson *et al.*, No. 9027, Equity, in the supreme court of the District of Columbia, and the said wit-

ness, being under oath as aforesaid, did answer the interrogatories and cross-interrogatories appended to said commission as follows:

To interrogatory No. 1 he said: My name is Azor H. Nickerson; I am forty-seven years old; my residence is Philadelphia, Pa.; my occupation is soldier, out of employment.

To interrogatory No. 2 he said: I married with complainant, Emma C. Derby, at San Francisco, Cal., August thirteenth,
174 1870; issue of marriage, two children—Florence D. and Mary C.

To interrogatory No. 3 he said: Was the individual owner of blocks 145 and 146, Couch's Addition to city of Portland, Oregon; bought them in 1869 or 1870, and think I sold them the same or following year; think the amount for which they were sold was twenty-five hundred dollars, but it may have been only two thousand; in either case the amount was lessened by the commission; do not remember to whom they were sold; did not invest the money realized from this sale especially, but placed it with other funds and used the whole in buying and selling lands in Washington Territory and lots in the city of Portland aforesaid. I had no reason to keep and did not keep any separate account of any of these transactions.

To interrogatory No. 4 he said: The proceeds arising from the sale of blocks numbers 145 and 146 were not invested, either individually or jointly, with any one in any purchase especially, but were merged with other moneys and used in the general speculations mentioned in answer to interrogatory No. 3.

To interrogatory No. 5 he said: I believe that the partition
175 between myself and the heirs of Jno. S. Walker was made at the dates specified and embraced the lots mentioned.

To interrogatory No. 6 he said: I do not remember to whom the lots were sold, but know that they were sold in three different parcels, at different times, and to different parties, I believe. I do not remember the amount, but believe that after the commissions were deducted the whole amount was between ten and twelve thousand dollars.

To interrogatory No. 7 he said: The purchase-money was in cash.

To interrogatory No. 8 he said: Cannot specify any particular way in which the proceeds were invested, because the money was merged with other moneys and all were used in paying debts and in various speculations.

To interrogatory No. 9 he said: I did not make any special investment of this money and have no means of knowing where it finally vested. This question is more particularly answered in my answer to question number 8.

To interrogatory No. 10 he said: Am unable to state how
176 I got the money with which I speculated and with whom I transacted my business, nor yet what portion or if all the money realized from sales of property was so used.

To interrogatory No. 11 he said: My answers in numbers eight, nine, and ten cover this question.

To interrogatory No. 12 he said: My answer to this is embraced in the foregoing answers.

To interrogatory No. 13 he said: My answer to this is contained in the foregoing answers.

To interrogatory No. 14 he said: I am unable to state the sources from whence the money for the purchase of house and lot, number 7 Dupont Circle, was obtained, except to say generally that it was obtained in the ordinary course of business, as set forth in my foregoing answers.

To interrogatory No. 15 he said: My answer to this question is embraced in my answer to No. 14.

To interrogatory No. 16 he said: I am unable to give any information on any of the points mentioned in this question.

To interrogatory No. 17 he said: I do not know.

177 To interrogatory No. 18 he said: The cheque was made by me, payable to order of Thomas Sheridan, payable at Middleton & Co.

To interrogatory No. 19 he said: Various speculations and business transactions, details of which I am unable to give.

To interrogatory No. 20 he said: Niagara Falls, Canada.

To interrogatory No. 21 he said: The writing shewn to me looks like the writing of my wife, née Carter, but I do not know. I first met Miss Lena D. Carter at Salt Lake, Utah, where she was, with her family, visiting in April, 1875; don't know when she left there or when she returned to her home in Washington.

To interrogatory No. 22 he said: I have seen her writing and I presume have seen her write. The writing shewn to me looks like hers, but I cannot say that it is hers.

To interrogatory No. 23 he said: I visited Rock Enon Springs, Va., twice in the summer of 1880; don't know exact time nor when I left, except that I stayed one or two days each time.

178 To interrogatory No. 24 he said: General and Mrs. Samuel Breck were the only persons whom I knew among those going at the same time.

To interrogatory No. 25 he said: I do not know whether she was there the whole time or not, but do remember seeing her go away for a drive with her mother, and also out walking with parties of young people, but how long she was gone when she went or when she returned I do not know. I think I remember having introduced several ladies of my acquaintance to Mrs. Breck, including Miss Lena D. Carter, her sister, and perhaps their mother, Mrs. Carter, who was with them.

To interrogatory No. 26 he said: Do not know when Miss Carter went to Rock Enon Springs nor with whom she went; think she returned to Washington with her mother and sister in September.

To interrogatory No. 26½ he said: I have no original letters or copies of original letters of the complainant nor anything else that ever belonged to her in my possession.

To interrogatory No. 27 he said: Do not now remember Mr. Mattingly or Mrs. Tripp, but do remember meeting Mrs. Carson,

179 Mrs. Mason, and a large number of other Washington people of my acquaintance.

The witness, being still under oath as aforesaid, made answer to the cross-interrogatories appended as follows:

To cross-interrogatory No. 1 he said: Neither at the time of my marriage nor at any other time did I ever make such agreement and I never heard of any such thing until the commencement of these proceedings.

To cross-interrogatory No. 2 he said: I never made any such agreement nor was ever such a thing referred — between myself and complainant, either before our marriage or at any time.

To cross-interrogatory No. 3 he said: Complainant never said anything of the kind to me nor did I to her, nor did I ever hear of it previous to these proceedings.

To cross-interrogatory No. 4 he said: Not a word passed between us on that subject and the marriage never had any such basis, either directly or indirectly.

To cross-interrogatory No. 5 he said: Not a word was said
180 about any conditions; either did she say anything about the consent of her mother. The complainant was at this time over twenty-one years of age and the consent of her mother was a matter of courtesy and not of right. There was no condition mentioned then nor at any other time, nor anything that could be construed into anything of the kind.

To cross-interrogatory No. 6 he said: None whatever, and the marriage was not entered into upon the faith of any promise whatever.

To cross-interrogatory No. 7 he said: I was the owner of said blocks. I never made any agreement or promise to the complainant in connection with said blocks.

To cross-interrogatory No. 8 he said: I never made any such agreement or promise, nor was anything said between us regarding any such matters.

To cross-interrogatory No. 9 he said: She did not and I did not.

To cross-interrogatory No. 10 he said: There was never any such contract or agreement, nor was anything ever said by either of us which might be so construed.

To cross-interrogatory No. 11 he said: The said lots were not suitable for building purposes. They were some distance from
181 any buildings; an old brickyard had formerly been located on them and they were covered by debris and surrounded by stumps.

To cross-interrogatory No. 12 he said: The said blocks were near the river, inaccessible to carriages, and unsuitable for building purposes and in an undesirable locality.

To cross-interrogatory No. 13 he said: We never spoke about building on said lots.

To cross-interrogatory No. 14 he said: Besides the said lots, I owned two lots in the same addition and one whole block higher up, both of which parcels were in desirable locations for building purposes; both parcels commanded a fine view of Mount Hood, and were accessible to carriages, and I often drove there to obtain a view

of the mountain, and if I ever did call attention to lots 145 or 146 it was from these choice locations, and if I ever mentioned building in connection with any of these lots it must have been with reference to these choice parcels, of course.

To cross-interrogatory No. 15 he said: They were not subject to any contract or promise or antinuptial agreement whatever, nor did I ever hear of any such intimation until since the commencement of these proceedings.

182 To cross-interrogatory No. 16 he said: There was not a word of any such conversation ever passed between us at the time of sale nor at any other time.

To cross-interrogatory No. 17 he said: Never, nor was there ever any conversation or transaction relative thereto that could be so construed or implied.

To cross-interrogatory No. 18 he said: None whatever.

To cross-interrogatory No. 19 he said: My recollection is that they were sold at three different times in three different parcels to three different persons.

To cross-interrogatory No. 20 he said: I had. I sold all of them to one man in 1878 for the sum of $4,500.00. The complainant united willingly with me in executing the deed and without any intimation of a marriage portion therein, and the money to be derived from the sale was to have been invested by me with other parties in certain cattle speculation in Nebraska. When the deed was sent to Portland the party who purchased the property found a defect in the title by reason of certain irregularities in the proceedings of the court which had decreed the partition as between

183 myself and the heirs of John S. Walker. This defeated the sale, and I was soon ordered to Fort Vancouver, near Portland, Oregon, when I visited the property, and upon personal inspection I told my agent that I should ask at least $12,000.00 for the property.

To cross-interrogatory No 21 he said: This question is fully answered in the answer to the preceding cross-interrogatory, No. 20.

To cross-interrogatory No. 22 he said: None whatever.

To cross-interrogatory No. 23 he said: Nothing was ever said by the complainant or myself in regard to such matter, nor did I ever hear of anything of the kind from any source until since the comment of these proceedings.

To cross-interrogatory No. 24 he said: Neither the house and lot referred to or the money with which it was purchased was ever subject to any promise, condition, or agreement on my part whatsoever.

To cross-interrogatory No. 25 he said: I never exchanged a word in any form with the complainant about the property in question or the money with which it was purchased.

184 To cross-interrogatory No. 26 he said: I never had anything but an equitable title to the house and lot No. 7 Dupont Circle referred to, and it is a fact that the complainant had no interest in it whatever.

To cross-interrogatory No. 27 he said: All the money ever used by me during my lifetime was acquired solely by myself, and I never

acquired through or by the complainant a dollar in money or property at any time, and all the money used in these investments was wholly and exclusively my own, and not a dollar ever belonged to the complainant.

To cross-interrogatory No. 28 he said: It was not.

To cross-interrogatory No. 29 he said: Nothing whatever was ever said by either of us that could ever have been construed into anything of that kind.

AZOR H. NICKERSON.

Which said testimony was reduced by me into writing and read over to and signed by said witness in my presence and is here annexed to the writ of commission, closed up under my seal, and returned into said court.

185 Witness my hand and seal this 30th day of April, A. D. 1885.

L. H. COLLARD,
U. S. Consular Ag't, Examiner.

In the Supreme Court of the District of Columbia, the 10th Day of April, 1885.

EMMA C. D. NICKERSON
v.
AZOR H. NICKERSON *et al.*
No. 9027, Equity Docket 24.

The President of the United States to L. H. Collard, U. S. consular agent, St. Catharines, Canada, Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Azor H. Nickerson, witness for the complainant in the above-entitled cause, upon the interrogatories annexed to this commission; and, therefore, you are hereby

186 commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you and then and there examine him, on oath or affirmation, upon the said interrogatories and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Carter, chief justice.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

Nickerson No. 1.

WASHINGTON, D. C., *June 5th*, 1883.

Mr. J. C. Derby.

SIR: I have sent to your care to Mrs. Emma C. Nickerson by B. & P. R. R. as freight one large chest, one small one, one little box, by mistake sent as freight, one sewing-machine, one folding chair; by Adams Express, one trunk, one small box; receipt of the same herewith enclosed.

A. H. NICKERSON.

187 *Interrogatories to A. H. Nickerson and Testimony. Filed Oct. 10, 1885.*

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON, LENA D. CARTER, Sometimes Called Lena C. Nickerson, & WM. B. MATTHEWS. } Equity No. 9027.

Interrogatories to be propounded to Azor H. Nickerson, one of the defendants in the above-entitled cause.

1. State your name, age, residence, and occupation.

2. When and where did you marry the complainant? Give her maiden name; and, if there has been any issue of said marriage, state it.

3. If you were the owner, individually or jointly with any one else, of blocks Nos. 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon, state the year you purchased said blocks, when you sold them, to whom sold, how much you realized from said sale, and how and in what kind of property did you reinvest said proceeds arising from the sales of the blocks aforesaid.

188 4. State whether or not the proceeds arising from the sale of blocks numbered 145 and 146 were invested by you, individually or jointly with one John S. Walker, in the purchase of lots 3, 4, 5, 6, 7, and 8, in block No. 24, in Couch's addition to said city of Portland.

5. State whether or not upon a partition between you and the heirs of said John S. Walker lots 7 and 8 and the north half of lot 6, in said block 24, were allotted to you about the 20th day of June and the 30th day of October, 1878.

6. State when and to whom you sold lots 7 and 8 and the north half of lot 6, in said block 24, and how much you received for said lots 7 and 8 and part of 6.

7. If only part of said purchase-money was paid in cash for said lots last above mentioned, state how much was paid, how the residue was received, and when the same was paid.

8. State fully and with particularity what you did with the entire proceeds arising from the sale or sales of said lots 7 and 8 and part of lot 6.

189 9. State with certainty, so far as your recollection will aid you to do so, what kind or description of property or security or securities you invested the proceeds received by you from the sale of said lots 7 and 8 and the said part of lot 6. If upon securities, where are they; if disposed of, what have you done with the proceeds? State where the said proceeds found a resting place.

10. If, on and from the 26th day of November, 1881, down to and including the 12th day of June, 1882, you were engaged in or connected with any persons, or pools, or syndicates, or combinations, or schemes for the purpose of speculating in money, stocks, bonds, or any securities of any kind, state when, where, with whom, how much money you put into said pools, stocks, bonds, or other species of speculations, when you obtained the money you so used in said speculations, and how much, if any, of the proceeds realized from the sales of said lots 7 and 8 and part of lot 6, in said block 24, did you invest in said schemes and pools and syndicates hereinbefore described.

11. If you should answer that you did not put all of the proceeds from said lots aforesaid into said pools and other speculations,
190 what did you do with the remainder? State fully and particularly.

12. State how much money you used in said speculations besides the sums realized from the sales of the lots aforesaid.

13. If you realized *many* from your various speculations covered by the period hereinbefore asked, state how much net profit from each speculation, giving a specific statement of the profits received by you from time to time as well as the losses incurred for the same period covered by said question heretofore propounded and through whom said speculations were made.

14. State the circumstances attending your obtaining the money that you used in the purchase of the house and lot known as No. 7 Dupont Circle, being lot No. 2, in square No. 114, from whom you received it, or from what combinations of pools or syndicates you received it or any part of it, and how much from each, and at what time or times you received the same and into what bank you deposited the same, and give the names of the parties and their address.

191 15. If you say some part of it came from your speculations aforesaid, state particularly and with clearness from which syndicate or pools or class of stocks or speculations and the dates you received the money that formed a part of the purchase-money aforesaid.

16. If, between the 26th of November, 1881, down to the 12th of June, 1882, you were engaged in any way in speculating or connected with any persons or pools or syndicates having for the object of speculating — in any manner, state when and where and with whom, what banks and brokers, you were so engaged. Give each separate and distinct speculation during the whole period above stated, how much you realized or how much you lost from each separate and distinct speculation, giving the exact sums and the various times; the names of the persons composing the syndicate or pools

or banks or brokers paying you the dividends or interest or shares realized by or from each or all of said investments; the banks or brokers with whom you made your deposits and drew your checks between the dates last aforesaid.

17. State how much money you had in cash, bonds, stocks,
192 securities or other personal property previous to the day you sold the lots aforesaid, and how did you invest said cash and otherwise dispose of said money, bonds, and stocks, and in what did you invest these avails, if you had such bonds and stocks, and did dispose of the same.

18. If the purchase-money for the payment of the house and lot No. 7 Dupont Circle was paid by check, state to whose order the same was made, who was the maker, and in what bank was the same made payable and paid.

19. From what sources were the funds obtained or realized with which said check was paid? State fully and particularly how the various sums were realized, if not all realized at one time, that made up the exact sum as the purchase-money for the said house and lot No. 7 Dupont Circle.

20. State where you were on the 5th day of June, 1883?

21. State in whose handwriting, if you know, is exhibit hereto attached and marked Nickerson No. 1, together with the
193 envelope. State also how long you have known the defendant, Lena D. Carter or Lena C. Nickerson, where you first made her acquaintance, and from that place when and where did she go & when did she come to Washington.

22. Have you ever seen Lena D. Carter, sometimes called Lena C. Nickerson, write and do you know her handwriting? If so, — whether or not exhibit marked Nickerson No. 1 and the envelope is in her handwriting.

23. State whether or not you were in the summer of 1880 or some part of said summer at Rock Enon Springs; if so, state how long you were there and when you left.

24. State whom you accompanied to said springs.

25. State, if you know, whether or not Lena D. Carter was not there the whole time you remained there, and state also whether or not you introduced said Lena D. Carter to Mrs. Caroline J. Breck.

26. State, if you know, when said Lena D. Carter left this
194 city for said Rock Enon Springs, how long she remained there, when she returned, who went there with her, and with whom did she return.

26½. If you have the original letters by complainant to you of Oct'r 9, 1881; July 20, 1882; September 25, 1882; November —, 1882; Dec. 31, 1882, and Feb'y 23, 1883, please produce and file the name with your —.

27. Do you remember seeing there, if you know them, Mr. William F. Mattingly, of Washington: Mrs. Carson, Mrs. Mason, then of Washington, and Mrs. Trippe, of Baltimore, Maryland?

JOHN J. JOHNSON AND
W. W. WILSHIRE,
Solicitors for Complainant.

195 In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry Wise Garnett and Conway Robinson, Jr., her solicitors, and now comes also the defendant, William B. Matthews, in proper person, and, without in any — or manner waiving the objections and exceptions or any of them which have been taken, noted, or filed by them or by any of them to the interrogatories propounded to Azor H. Nickerson, as a witness on behalf of the complainant in the above-entitled cause, do, nevertheless, expressly reserving and insisting on all such objections and exceptions, now come and file the following cross-interrogatories in order that the said cross-interrogatories may be propounded to the said Azor H. Nickerson, which said cross-interrogatories are hereto annexed and are as follows:

196 Cross-interrogatories to be propounded on behalf of the defendants to Azor H. Nickerson, a witness for and on behalf of the complainant, called, produced, sworn, and examined on behalf of the complainant.

1. If, in answer to the interrogatories propounded to you on behalf of the complainant, you state that you were ever married to the complainant, then state whether or not at the time that you were so married to the complainant you agreed with the complainant to give to or to have in trust for or to convey to a trustee for or to settle upon the complainant and her children, or any of them, or any person or persons, any property in Portland, Oregon, or anywhere else.

2. Did you ever so agree at any other time previous to your said marriage to the complainant, and was your marriage to the complainant made or entered into upon any such agreement or upon any similar agreement?

3. Did you say to the complainant or did the complainant say to you at the time that you were married to her anything about any marriage settlement or trust fund, or about your giving to or
197 holding in trust for or conveying to a trustee for or settling upon the complainant or the complainant and her children, or any of them, or any person or persons whomsoever, any property in Portland, Oregon, or anywhere else?

4. Was anything of the sort ever said by you to the complainant or by the complainant to you at any time prior to your said marriage with the complainant, and was said marriage made or entered into upon the faith of anything of the sort?

5. When the complainant agreed to marry you what was her age,

and did she so agree to marry you subject to any condition or conditions whatsoever, such as the consent of her mother, or such as a marriage settlement being made upon her or upon any person or persons, or such as a trust fund being set apart for the benefit of herself or of any person or persons whomsoever?

6. Was there at the time of your marriage to the complainant or at any time prior thereto anything said by the complainant to you or by you to the complainant that could be construed into anything of the kind, and was your marriage with the complainant made or entered into upon the faith of anything of the kind?

198 7. If, in answer to the interrogatories propounded to you by the complainant, you also state that you ever were the owner of blocks numbers 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon, then state whether or not, at the time that you contracted to marry the complainant and became engaged to her, or at any time previous to your marriage with the complainant, you agreed with the complainant or promised the complainant to reserve said blocks numbers 145 and 146 or either of them or any part thereof as a marriage portion or settlement or as a trust fund for the complainant or for any person or persons whomsoever?

8. Did you then or at any time previous to your marriage with the complainant agree with the complainant or promise the complainant to hold said lots numbers 145 and 146, or either of them or any part thereof in trust for or to convey the same or either of them or any part thereof to the complainant or to the complainant and her children or any of them or any person or persons whomsoever, or to convey the same to a trustee for her or her and her children or any of them or any person or persons whomso-

198½ ever, or to build a house thereon for the complainant or for her and her children or for any of them or for any person or persons whomsoever?

9. Did you, at the time that you contracted to marry the complainant and became engaged to her or at any time previous to your marriage with her, say to her or did she say to you anything about any property owned by you in Portland, Oregon, or elsewhere?

10. Was there ever any antenuptial contract or agreement whatsoever between you and the complainant concerning said blocks numbers 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon, or relative thereto or having anything to do therewith, or was there ever anything said by either of you to the other that could be construed into anything of the kind?

11. Were said blocks numbers 145 and 146 or either of them suitable for building purposes? How and where were they located and what was their surroundings?

12. Were said blocks numbers 145 and 146 quite inaccessible to carriages and were they near the river or low ground, and

199 were they in an undesirable locality for building purposes? If so, state fully about the same.

13. Did you say anything to the complainant at the time that you contracted to marry her and became engaged to her or at any time

prior to your marriage with her about building upon said lots numbers 145 and 146 or upon either of them or any part thereof?

14. Were said blocks numbers 145 and 146 the only blocks owned by you in said Couch's addition to the said city of Portland, in the State of Oregon; if not, did you own other property in said addition and was any of such other property higher up and accessible and did it command a fine view and was it a choice location for building purposes?

15. If, in answer to the interrogatories propounded to you by the complainant, you state that you sold said blocks numbers 145 and 146, then state whether or not the proceeds of said sales of said blocks numbers 145 and 146 were subject to any trust whatsoever or to any antenuptial promise, contract, or agreement or portion or settlement whatsoever.

16. Was anything said by you to the complainant or by her to you or agreed upon by and between you and her at the time that
200 said blocks numbers 145 and 146 were sold or at any time prior thereto as to or relative to the said blocks numbers 145 and, 146 or any part thereof or the proceeds thereof or of any part thereof being subject to any portion, promise, trust, marriage contract, agreement, or settlement whatsoever?

17. Was your interest in lots numbers 3, 4, 5, 6, 7, and 8, in blocks number 24, in Couch's addition to the city of Portland, Oregon, ever subject to any trust whatsoever or to any antenuptial promise, contract, or agreement or portion or settlement whatsoever?

18. Were lots 7 and 8 and the north half of lot 6, in said block number 24, in Portland, Oregon, or was your interest therein ever subject to any trust whatsoever or to any antenuptial promise, contract, or agreement or portion or settlement whatsoever?

19. If, in answer to the interrogatories propounded to you by the complainant, you state that you sold said lots 7 and 8 and the north half of lot 6, in said block 24, in Portland, Oregon, then state whether or not the same were all sold in different parcels, at different times, and to different persons.

201 20. Have you ever previously sold said lots 7 and 8 and the north half of lot 6, in said block 24; if so, when or about when, and had the complainant voluntarily, freely, and willingly united in executing a deed for the same to the purchasers?

21. Did said previous sale of said lots 7 and 8 and the north half of lot 6, in said block 24, fall through; and, if so, why and for what reason? State fully all about the same.

22. Were the proceeds of sale of said lots 7 and 8 and the north half of lot 6, in said block 24, or was any part thereof ever at any time subject to any trust whatsoever or to any antenuptial promise, contract or agreement or portion or settlement whatsoever?

23. Was anything said by you to the complainant or by her to you or agreed upon between you and her at the time that said lots 7 and 8 and the north half of lot 6, in block 24, were, respectively, finally sold or at any time prior thereto as to or relative to the said lots 7 and 8 and the north half of lot 6 or any part of them
202 or any of them or the proceeds thereof or of any part thereof

being subject to any promise, trust, portion, marriage contract, agreement, or settlement whatsoever?

24. If, from your answers to the interrogatories propounded to you on behalf of the complainant, it appears that you purchased or ever at any time had any interest in or title to the house and lot known as number 7 Dupont Circle, being lot number 2, in square number 114, in the city of Washington, District of Columbia, then state whether or not the same or the money with which the same was purchased ever was subject to any antenuptial promise, trust, contract, agreement, or marriage settlement whatsoever.

25. Did you ever say anything to the complainant or did she ever say anything to you as to or relative to said house and lot known as number 7 Dupont Circle—that is to say, said lot numbered 2, in square numbered 114—being, or about the money with which the same was purchased being, held by you in trust for or conveyed by you to *or conveyed by you to* a trustee for or in any way settled upon or held in trust for the complainant or her and her
203 children or any of them, or that anything of the sort would ever be done by you, or was anything ever said by either of you to the other that could possibly be construed into anything of the kind?

26. Did you ever have anything more than an equitable title to said house and lot numbered 2, in square numbered 114, in Washington, District of Columbia, and is it a fact that the complainant never, at any time, had any interest therein whatsoever?

27. If, in answer to the interrogatories propounded to you on behalf of the complainant, you have stated that you ever made or entered into any investments or speculations, either alone or with others, then state whether or not the money used by you in and applied by you to and put and placed by you in such investments or speculations was wholly, exclusively, and altogether your own, or did any of the said money belong to the complainant?

28. Was any of the money which you so used, invested, or speculated with subject to any marriage settlement or trust, or to any antenuptial promise, agreement, or contract whatsoever, or to any antenuptial trust?

29. Was anything ever said by you to the complainant or by her to you as to or relative to your investments or speculations
204 that could have ben construed into anything of that kind?

ENOCH TOTTEN,
For A. H. N.
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'r- for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

205 *Deposition of A. H. Nickerson. Filed Oct.* 17, 1885.

In the Supreme Court of the District of Columbia, the 11th day of November, 1885.

EMMA C. D. NICKERSON, Compl't,
vs.
AZOR H. NICKERSON, WM. B. MATTHEWS, and LENA DILLER CARTER, Def'ts.
No. 9027, Equity Docket 24.

The President of the United States to Leonard H. Collard, United States consular agent, St. Catharine's, Canada, Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Azor H. Nickerson, Thorold, Ontario, Canada, as a witness for the defendants in the above-entitled cause, upon the interrogatories and cross-interrogatories annexed to this commission, and therefore you are hereby commanded, at a certain day and place or certain days and places, to be
206 appointed by you, to cause said witness to come before you, and then and there examine him on oath or affirmation upon the said interrogatories and cross-interrogatories and reduce his testimony into writing, to be signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants.
No. 9027.

207 Interrogatories to be propounded to Major Azor H. Nickerson, to be called, sworn, and examined on behalf of the defendants.

1st. When, where, and under what circumstances was the engagement of marriage between yourself and the complainant entered into?

2nd. If, in answer to the preceding question, you state in substance, among other things, that at the time you engaged yourself to the complainant both you and the complainant were en route to Idaho with a party of officers and their wives, then state how far you were from Portland, Oregon, at the time of engaging yourself to the complainant, and how long it was thereafter before the complainant again returned to Portland, Oregon.

3rd. When, where, and under what circumstances was your engagement to the complainant announced?

4th. Who went upon said excursion besides the complainant and yourself? What were the names of the other members of the party?

208 5th. Did Mrs. Celia D. Kenny, the complainant's mother, accompany her on that occasion? Was the said Mrs. Celia D. Kenny one of said party?

6th. What agreement, if any, did you, at the time that you engaged yourself to the complainant or at any time before said engagement, make or enter into with the complainant or with any one else relative to your giving to or holding in trust for or conveying to a trustee for or settling upon the complainant or the complainant and her children or any of them, or any person or persons whomsoever, any property of any kind whatsoever in Portland, Oregon, or anywhere else?

7th. Was there, at the time of your engaging yourself to the complainant or at any time prior thereto, any such or any similar agreement or understanding between the complainant or any one else and yourself?

8th. What, if anything, at the time of your engaging yourself to the complainant or at any time prior thereto, was said by

209 you to the complainant or by the complainant to you about any marriage settlement or trust fund, or about your giving to or holding in trust for or conveying to a trustee for or settling upon the complainant or the complainant and her children or any of them or any person or persons whomsoever any property of any kind whatsoever, either in Portland, Oregon, or anywhere else?

9th. What was the complainant's age at the time that she engaged herself to you?

10th. At the time that the complainant engaged herself to you and agreed to marry you what, if anything, was said about her mother's consent to said engagement? Did she agree to marry you subject to any condition or conditions whatsoever?

11th. At the time of your agreeing to marry the complainant what was your rank in the army and what was your salary as an officer in the army?

210 12th. When did you marry the complainant?

13th. What agreement, if any, did you, at the time that you married the complainant or at any time prior thereto, make or enter into with the complainant or with any one else relative to your giving to or holding in trust for or conveying to a trustee for or settling upon the complainant or the complainant and her children or any of them or any person or persons whatsoever any property of any kind whatsoever in Portland, Oregon, or anywhere else?

14th. What agreement, if any, did you ever make or enter into with the complainant or any one else subsequent to your marriage to her relative to your giving to or holding in trust for or settling upon or conveying to a trustee for the complainant or the complainant and her children or any of them or any person or persons

whomsoever any property of any kind whatsoever in Portland, Oregon, or anywhere else?

15th. Was there ever at any time any agreement between
210½ you and the complainant relative thereto?

16th. What, if anything, at the time that you married the complainant or any time prior thereto, was said by you to the complainant or by the complainant to you about any marriage settlement or trust fund, or about your giving to or holding in trust for or conveying to trustee for or settling upon the complainant or the complainant and her children or any of them or any person or persons whomsoever any property of any kind whatsoever, either in Portland, Oregon, or anywhere else?

17th. What, if anything, did you ever say to the complainant or did the complainant ever say to you, subsequent to your marriage to her, relative to your giving to or holding in trust for or settling upon or conveying to a trustee for the complainant or the complainant and her children or any of them or any person or persons whomsoever any property of any kind whatsoever?

18th. Was anything of the sort ever said by you to the
211 complainant or by the complainant to you at any time whatsoever, either prior to or subsequent to your marriage with the complainant, and was said marriage made or entered into upon the faith of anything of the sort?

19th. What property did the complainant own, if any, at the time that she married you, and what property, if any, has she received or acquired since?

20th. Has she ever, during the entire time that she lived with you as your wife, been seized or poss-ed of any property whatever which has aided in the support of the family?

21st. Have you ever received any property from her or gotten any benefit from any property of hers?

22d. What was her lot when she married you?

23d. What lots or blocks of ground were owned by you in your own right in Portland, Oregon, at the time that you married the complainant?

24th. If in answer to the 23d interrogatory you mention
212 blocks numbered 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon, then state what, if any, antenuptial contract or agreement was made or entered into between the complainant and yourself relative thereto.

25th. What, if anything, was said at the time of your marriage to the complainant or at any time prior thereto relative to your holding said blocks numbered 145 and 146 or either of them or any part thereof in trust for or relative to your conveying the same or either of them or any part thereof to the complainant or to the complainant and her children or any of them or any person or persons whomsoever, or relative to your conveying the same to a trustee for her or her and her children or any of them or any person or persons whomsoever, or relative to your building a house thereon for the complainant or for her and her children or for any of them or for any person or persons whomsoever?

26th. What, if anything, was said relative thereto at any time after your marriage to the complainant?

213 27th. Was there ever any antenuptial contract or agreement whatsoever, either verbally or in writing, between the complainant and yourself concerning said blocks numbered 145 and 146, in Portland, Oregon?

28th. What, if anything, was ever said by you to the complainant or by the complainant to you, at the time of your marriage to her or at any time prior thereto, concerning any property whatsoever?

29th. How and where were said blocks numbered 145 and 146 located and what were their surroundings?

30th. How were they adapted to building purposes?

31st. Did you, at the time of your marriage, own any other property in Portland, Oregon, besides said blocks 145 and 146; if so, what other property did you own there, how was it located, what were the surroundings of the same, and how was the same adapted to building purposes?

214 32d. Have you at any time since your marriage with the complainant ever purchased any property whatsoever or any interest in any property whatsoever which in any manner whatever was or became subject, in favor of the complainant and her children or any of them, to any written or verbal antenuptial or post-nuptial marriage settlement, contract or agreement, or trust whatsoever?

33rd. Have you ever since your marriage with the complainant used in the purchase of any property whatsoever any moneys or funds whatsoever which were in favor of the complainant or of the complainant and her children or of any *of any* of them or of any person or persons whomsoever, subject to any written or verbal antenuptial or post-nuptial marriage settlement, contract, agreement, trust, or settlement whatsoever?

34th. Have you ever, prior to the institution of suit No. 8613, in equity, brought by the complainant in this District on June

215 20th, 1883, heard it claimed or ever intimated by the complainant or any one else that there ever was any written or verbal antenuptial or post-nuptial marriage settlement, contract, agreement, or understanding whatsoever between the complainant and yourself?

35th. Did you ever acquire any interest in or title to lot numbered (2) two, in square numbered (114) one hundred and fourteen, being the house and lot known as No. 7 Dupont Circle, in the city of Washington, District of Columbia; if so, when and to whom was the legal title to the same conveyed upon the purchase thereof?

36th. If you answer that the legal title to the same was conveyed by the vendor to William B. Matthews, then state why the legal title to the same was so conveyed?

37th. Did you ever have anything more than the equitable title of or was the legal title ever conveyed to you of said house and lot known as number 7 Dupont Circle, being lot numbered 2, in square numbered 114, in the city of Washington, D. C.?

216 38th. To whom did the money and funds belong with which said house and lot number 7 Dupont Circle, being lot numbered 2, in square numbered 114, in the city of Washington, D. C., was purchased and paid for by you?

39th. Were the money and funds so used by you in purchasing and paying for said house and lot last above mentioned ever subject to any written or verbal antenuptial or post-nuptial promise, trust, contract, agreement, or marriage settlement whatsoever?

40th. Did you ever say anything to the complainant or did she ever say anything to you as to or relative to said house and lot known as number 7 Dupont Circle—that is to say, did lot numbered 2, in square numbered 114 being—or about the money with which the same was purchased being held by you in trust for or conveyed by you to *or conveyed by you to* a trustee for or in way settled upon or held in trust for the complainant or her and her children
217 or any of them, or that anything of the sort would ever be done by you, or was anything ever said by either of you to the other that could possibly be construed into anything of the kind?

41st. Prior to your purchase of said house and lot known as number 7 Dupont Circle—that is to say, lot numbered 2, in square numbered 114, in the city of Washington, D. C.—had you sold an equity of redemption in or interest in any other lot or piece of ground in the city of Washington, D. C.? If you answer yea, then state when the same was purchased by you, how long it was held by you, and also when and for how much the same was sold by you, and how was the same known and designated.

42nd. If in answer to the last interrogatory (No. 41) you mention lot "A" of E. A. Woodward's subdivision of lot No. 38, in square 210, in Rigg's subdivision of said square, in the city of Washington, D. C., then state whether or not the said lot "A" or the pur-
218 chase-money which you paid therefor, or the proceeds of sale which you received for the same, ever were subject in any manner to any written or verbal antenuptial marriage settlement, promise, trust, contract, or agreement whatsoever between the complainant and yourself?

43d. At the time that you purchased said lot "A" was it subject to any deed of trust?

44th. Was there an encumbrance upon said property during the entire time that you owned said lot "A" subject to which you bought and sold said lot "A," or was the same paid off and released before you sold the said lot "A?"

45th. Did you ever own anything more than an equity of redemption in said lot "A?"

46th. For how much did you sell the same?

47th. Did you, at the time of your marriage to the complainant or at any time prior thereto, make any promise to or have any
219 agreement with the complainant or any one else relative to regarding, consulting, following, or observing the wishes of the complainant as to the sale or purchase of any property whatso-

ever, or as to the investment or reinvestment of the proceeds arising from any such sale?

48th. Did you, after your marriage to the complainant, ever make any such promise or have any such agreement?

49th. What conversation, if any, did you have with Mrs. Celia D. Kenney, the complainant's mother, at the time of your marriage to the complainant or at any time prior thereto, relative to your conveying to the complainant any property as a marriage settlement or relative to your settling upon, holding in trust for, or conveying to a trustee for the complainant or her and her children or any of them or any person or persons whomsoever any property whatsoever?

50th. Did you ever, at any time, give said Mrs. Celia D. Kenney any informatien relative thereto?

220 51st. What, if anything, did you ever say to the said Mrs. Celia D. Kenny at any time about your investing the proceeds arising from the sale of any of your property in the name of or for the sole and separate benefit of the complainant or of her and her children or of any of them.

52d. Did the complainant or any one else ever suggest your conveying any of your property to trustees for her benefit, or suggest any change being made in the title to the same?

53d. Did the complainant ever have anything to do with the selection of or purchase of any lot or lots that were bought by you, or did she ever select or purchase the same?

54th. Was she consulted about the same or about the judiciousness of making any purchase of any lot or lots or about the advisability of making any investment?

55th. Did she have any voice in the matter whatsoever?

221 56th. Who paid the taxes upon the various pieces of property mentioned in the bill of complaint, and to whom did the money belong with which said taxes were paid from the time of your marriage to the complainant until her return from Europe?

57th. Did you ever have to improve the lots originally purchased by you and John S. Walker together; if so, why was the same necessary, how much did you have to pay therefor, how did the amount thereof compare with the original purchase-money, and to whom did the money belong with which you made such payments?

58th. When and for how much did you first sell said last-mentioned lots or your interest therein, and did the transaction fall through; if so, why did it fall through?

58th. Did the complainant at the time unite with you in executing a deed for the same to the purchaser?

59th. Did she object to doing so on any ground whatever?

222 60th. What was it that delayed you in selling said lots or your portions thereof?

61st. Were your parts thereof finally sold together or separately; if separately, how did she, the complainant, learn of such sale, and what means did she have of knowing the total amount received for them all until she received from you the deed for the last lot to be executed by her?

62d. Did you ever, at any time, enter into any conspiracy with the defendants, Lena Diller Carter and William B. Matthews, or either of them or any person or persons whomsoever to wrong, injure, or defraud the complainant or any one else in any manner whatsoever?

63rd. Did any conspiracy whatever exist or subsist at any time between you and your codefendants or either of them?

64th. Did you, prior to your marriage with the defendant, Lena Diller Carter, ever converse with her about any property in Portland, Oregon, or anywhere else?

223 65th. Had you ever known, seen, or heard of the defendant, William B. Matthews, prior to the complainant's going to Europe? When did you first know him, see him, or hear of him?

66th. Are you aware of the defendant, William B. Matthews, ever having met the the defendant, Lena Diller Carter, prior to the morning of your marriage with her? When did he first meet her, so far as you are aware?

67th. Did you ever converse with the defendant, Lena Diller Carter, to induce or enter into any conspiracy with her to induce the complainant to go to Europe?

68th. Did you ever enter into any conspiracy whatsoever to induce her to go to Europe?

69th. Did Mrs. E. A. Carter, the mother of the defendant, Lena Diller Carter, ever rent any house from you; if yea, what house and what rent did she pay you for the same?

70th. If in answer to the last question (No. 69) you say that she rented from you house No. 7 Dupont Circle, Washington, D.

224 D., then state when she rented the same from you and whether or not you had previously been trying to obtain a tenant for the said house?

71st. If you answer that you had been trying to obtain a tenant for the same before she rented said house, then state how long you had been so trying and what efforts you had made or steps you had taken to accomplish that result, and with what result.

72d. When you first suggested renting your house to her was the offer accepted or declined?

73d. If you say, in answer to the last question (No. 72), that she at first declined and refused to rent the same, then state whether or not she made any effort to find another house or suitable rooms before she consented to rent and occupy said house, No. 7 Dupont Circle?

74th. Who composed her family and occupied said house with her as members of her family?

75th. During the entire time previous to your marriage with the defendant, Lena Diller Carter, viz., from September, 1882, to

225 April, 1883, were you ever alone with her or did you see her except in the presence of one or more members of the family?

76th. After your marriage with the defendant, Lena Diller Carter, did you convey to her any household and kitchen furniture and personal property in the city of Washington, D. C., and did you cause to be conveyed to her any real estate in said city?

77th. If, in answer to the last question (No. 76), you said that you did, then why did you do so?

78th. Was the same done in pursuance of any conspiracy whatsoever, real or implied, between you and the defendants, William B. Matthews and Lena Diller Carter, or either of them, or any other person or persons whomsoever?

79th. Was there, in addition to other considerations of a legal and moral and valuable character, any actual money consideration insisted on by you for said conveyances to said Lena Diller Carter, and did said defendant, Lena Diller Carter, pay you any
226 money consideration, as set forth in said deeds and instruments of transfer aforesaid?

ENOCH TOTTEN,
Sol'r for A. H. Nickerson.
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Solicitors for Def't, Lena Diller Carter.
WM. B. MATTHEWS, *P. P.*

Filed Nov. 4, 1885.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.*
} Equity No. 9027.

The complainant, without waiving any of the objections filed to the interrogatories-in-chief, proceeds to cross said interrogatories-in-chief as follows:

Cross-interrogatories to be propounded, on behalf — the complainant, to Azor H. Nickerson, a witness for and on behalf of the defendants.

1 Cross-interrogatory. State your name, age, residence, and present occupation.

2nd Cross-interrogatory. Are you still in the Army of the
227 United States? If not, when and how did you get out of the army?

3rd Cross-interrogatory. State the month, day, and year you left the army and what has been your occupation since and where have you lived from time to time since you went out of the army.

4th Cross-interrogatory. How long, as near as you can state, after you sold blocks 145 and 146, Couch's addition to the city of Portland, Oregon, you purchased lands in Washington Territory and lots in the city of Portland? State where in Washington Territory and also name the location and number of the lots and block in the city of Portland.

5th Cross-interrogatory. Where were you living or staying on the 31st of May, 1883; how long did you stay and where did you go next?

6th Cross-interrogatory. When and where did you first become acquainted with William B. Matthews?

7th Cross-interrogatory. Was he at one time a clerk in the
228 War Department? If so, when, and what was the relative position of his room to yours?

8th Cross-interrogatory. State, if you know, when said Matthews received his appointment as clerk, and when he left the Department. At whose instance, if you know, did said Matthews receive his appointment?

9th Cross-interrogatory. What are the relations between you and said Matthews, intimate or not?

10th Cross-interrogatory. Was said Matthews a visitor to your house prior to the complainant's going to Europe? If he was, how often did he visit your family before the complainant left this country?

11th Cross-interrogatory. If said Matthews was acquainted with complainant, state the circumstances leading to that acquaintance.

12th Cross-interrogatory. Is the William B. Matthews mentioned in the 62nd interrogatory-in-chief the same William B. Matthews who testified as witness for you in your suit in Philadelphia against the complainant for a divorce?

229 13th Cross-interrogatory. State if you — in the summer of 1880, at Rock Enon Springs; if so, state which month it was in said year.

14th Cross-interrogatory. Give the days, as near as you can, when you went there, and when you left.

15th Cross-interrogatory. If you went there more than once during that summer, state the number of times you went there.

16th Cross-interrogatory. Whom did you accompany or go with on each one of said trips, and who, if any one, returned with you?

17th. Cross-interrogatory. State if Miss Lena D. Carter went with you on — occasion to said springs or returned home with you.

18th Cross-interrogatory. Who was with Miss Lena D. Carter at said springs besides yourself?

19th Cross-interrogatory. Do you remember making two visits to said springs while Miss Lena D. Carter was there, without her mother being there?

20th Cross-interrogatory. Was not Miss Lena D. Carter
230 there all the time, and did you not go there for the express purpose of seeing her?

21st Cross-interrogatory. Is it not a fact that you were particularly attentive to Miss Lena D. Carter and often went with her in walking alone, but occasionally going with her elder sister?

22nd Cross-interrogatory. After the return from Rock Enon Springs of both Miss Lena D. Carter and yourself did not you often go walking with her; and, — your walks alone with Miss Carter, did you not meet Mrs. Margaret C. Mason, then a resident of the city of Washington?

23rd Cross-interrogatory. Did you not also attend the Church of the Ascension in company alone with Miss Carter and occupy a seat near Mrs. Mason?

24th Cross-interrogatory. In whose handwriting is the name "Mrs. A. H Nickerson, Cobb's Island, Virginia," on the envelope hereto attached and marked Exhibit A; and also in whose handwriting on the back of the letter enclosed in said Exhibit A is the following:

231 "My Dear Em.: We would be satisfied with a little girl.
"SELDEN."

"This was addressed to me on the outside.
"N."

The said letter was filed as Exhibit B.

25th Cross-interrogatory. Have you the original letter from the complainant to you of the following dates? If so, please attach the same to this your deposition.

Dresden, October 9, 1881.
" July 20, 1882.
" September 25, 1882.
Paris, Nov. 16 & 17, 1882.
" Dec'r 31, 1882, and
" Feb'y 25, 1883.

26th Cross-interrogatory. How much cash money did Lena D. Carter pay you, and from whom she received it, as consideration for the deed to the house No. 7 Dupont Circle?

27th Cross-interrogatory. How old was Miss Lena D. Carter at that time? And if she was engaged in any business state what business.

28th Cross-interrogatory. Was she at that time a lady of means?

232 29th Cross-interrogatory. Tell us if, after the complainant left for Europe and before you caused said house and lot aforesaid to be conveyed to said Lena D. Carter, you were taken ill, while at Miss Carter's or her mother's, on one occasion, and you told your servant, John, if you should happen to die there, he, John, must take you away and not let it be known where you died?

30th Cross-interrogatory. Did you, while at Rock Enon Springs, introduce Miss Lena Carter to Mrs. Mason and Mrs. Carson?

J. J. JOHNSON &
W. W. WILSHIRE,
Sol'rs for Complainant.

EXHIBIT A. Filed Nov. 4, 1885.

(Envelope post-marked:)
Washington, 1879, Aug. 27, 5 p. m., D. C. [Stamp.]
(Addressed:)
Mrs. A. H. Nickerson,
Cobb's Island,
Virginia.

233 EXHIBIT B.

SAN FRANCISCO, *August* 19, 1879.

MY DEAR EMMA: You will be glad to know that the Angel of Life stopped at our home last night at ten minutes of eight o'clock, and there was left a dear little girl baby with five toes on each foot.

Florence had a very easy time. It was in fact hardly anything, thanks to her new course of diet (?). She is in splendid health otherwise, and we shall try and bring her *us* in better health than she has enjoyed ever before.

The baby weighs 8 pounds and is everything we could wish except sex.

Yours affectionately,

JAMES T. WHITE.

(Endorsed on back:) My dear Em.: We would be satisfied with a little girl. Selden.

This was addressed to me on the outside.

N.

234 I, Leonard H. Collard, United States consular agent, St. Catharine's, Canada, do hereby certify that I did, on the seventeenth, eighteenth, twentieth, and twenty-first days of November, A. D. 1885, cause Azor H. Nickerson, the witness named in the annexed commission, to come before me at St. Catharine's, Canada, and did then and there first administer an oath to said witness, on the Holy Evangely of Almighty God, to tell the truth, the whole truth, and nothing but the truth in the cause of Emma C. D. Nickerson *vs.* Azor H. Nickerson *et al.*, No. 9027, equity, in the supreme court of the District of Columbia; and the said witness, being under oath as aforesaid, did answer the interrogatories and cross-interrogatories appended to said commission as follows, in the seventeen following pages of paper writing:

235 In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendant-. } No. 9027.

Answers to interrogatories propounded to Major Azor H. Nickerson as a witness called, sworn, and examined on behalf of the defendants.

To the questions put to him, being the interrogatories hereto annexed, the said Azor H. Nickerson made answer as follows:

To interrogatory No. 1 he answered: At Dallas, Oregon, April 21st, 1870. We were en route with a party of officers and their wives from Portland, Oregon, to Fort Lapwai, Idaho.

To interrogatory No. 2 he answered: I think Dallas is over a hundred miles from Portland, and to the best of my recollection the complainant did not return to Portland for several weeks
236 thereafter.

To interrogatory No 3 he answered: Our engagement was announced while we were on the trip to Idaho and before our return to Portland.

To interrogatory No. 4 he answered: Mrs. Crook, wife of General George Crook, Col. & Mrs. Perry, Colonel Ludington, Lieutenant, now Captain, Pollock, and others whose names I do not now recall.

To interrogatory No. 5 he answered: Mrs. Celia D. Kenny, the complainant's mother, was not of the party, nor did she accompany the complainant. To the best of my belief, Mrs. Kenny was then in San Francisco, California.

To interrogatory No. 6 he answered: I did not make any such agreement, nor do I believe that the complainant then knew that I owned any property in Portland or elsewhere.

To interrogatory No. 7 he answered: There was no agree-
237 ment with the complainant or any one else looking to any such understanding or anything that could or might be so construed.

To interrogatory No. 8 he answered: The engagement was made while we were out walking, in the evening, at Dallas, and nothing was ever said about any marriage settlement or trust fund of any kind whatever at that or any other time.

To interrogatory No 9 he answered: The complainant at the time of her engagement of marriage with me was about twenty-three years of age.

To interrogatory No. 10 he answered: At the time the complainant made her engagement with me nor at any subsequent period was anything said about the consent of her mother. The agreement was made without any condition or conditions, express or implied.

To interrogatory No. 11 he answered: I was a captain in the army and an aide-de-camp, my pay and allowances being between two thousand and three thousand dollars a year.

238 To interrogatory No. 12 he answered: I married the complainant on August 13th, 1870.

To interrogatory No. 13 he answered: I made no agreement, either at the time of marriage or previous thereto, in regard to any money or property whatsoever. Nothing of the kind was ever said by the complainant or by any one else on her behalf about any money or property whatsoever, either at Portland, Oregon, or elsewhere.

To interrogatory No. 14 he said: I never made any agreement with the complainant, either before or subsequent to my marriage with her, about any trust fund, marriage settlement, or anything that might be so construed. Neither she nor I ever even mentioned such a thing.

To interrogatory No. 15 he said: Never; nor did I ever hear of any such thing until after the commencement of these proceedings.

To interrogatory No. 16 he said: Nothing of the kind was
239 ever mentioned by me or by the complainant to me, or by

any one else to me, or anything having any possible reference thereto.

To interrogatory No. 17 he said: Nothing of the kind was ever said or mentioned by the complainant to me or by me to her, or by any one else to me, either before or subsequent to said marriage.

To interrogatory No. 18 he said: Nothing of the sort was ever said by either the complainant or me, nor was the said marriage entered into upon the faith of anything of the sort; no conditions were asked or even mentioned on either side.

To interrogatory No. 19 he said: At the time the complainant married me she had not, to my knowledge, nor did I ever afterwards hear of her having, any money or property whatever.

To interrogatory No. 20 he said: Never; not a dollar or a dollar's worth of property was ever contributed by her toward the support of herself or the family.

240 To interrogatory No. 21 he said: I never received any money or property from the complainant on any account whatever, nor did I ever receive any benefit from any property of hers, either directly or indirectly.

To interrogatory No. 22 he said: The complainant had no dot to bring into the marriage community.

To interrogatory No. 23 he said: I think, at the time of my marriage with complainant, I was the owner of blocks 160, 145, and 146 and lots 6 and 7, block 59, Couch's addition to the city of Portland. They were all owned in my own right.

To interrogatory No. 24 he said: No antenuptial or other agreement was ever made or mentioned to the complainant or any one on her behalf relative to blocks 145 and 146 or any other property whatever.

To interrogatory No. 25 he said: Nothing was ever said to the complainant by me, either at our marriage or prior thereto, about any property to be held in trust, and as to building a house

241 on the blocks referred to it would have been an absurd proposition in view of the fact that I was the owner of a choice block (160) higher up in the addition, which was a desirable place for building purposes, while blocks 145 and 146 were in an undesirable locality, near the river, on low ground; but I never mentioned anything about or thought of conveying them to any one in trust for the benefit of complainant or her children or for any one else.

To interrogatory No. 26 he said: Nothing whatever.

To interrogatory No. 27 he said: There never was.

To interrogatory No. 28 he said: I think upon one or more occasions we drove out to block No. 160, Couch's addition aforesaid, from which we could have a fine view of Mount Hood, and I may have mentioned casually that I owned the other blocks down in the old brick yard; that I expected to sell soon; but the remarks were

242 casual only and had no reference to any marriage or trust of any kind whatever.

To interrogatory No. 29 he said: Blocks 145 and 146 aforesaid were and old brick yard on low ground near the river.

To interrogatory No. 30 he said: They were in an undesirable locality for building purposes, and it was many blocks distant to any buildings.

To interrogatory No. 31 he said: I owned block 160 and lots 6 and 7, block 59, all in Couch's addition, but in very desirable localities for building, both having fine views of Mount Hood from them, and on block 59 there were houses already built.

To interrogatory No. 32 he said: I never have.

To interrogatory No. 33 he said: I never have.

To interrogatory No. 34 he said: I have not.

To interrogatory No. 35 he said: I never acquired any legal title to and only an equitable interest in lot number (114) one
243 hundred and fourteen, house known as number 7 Dupont Circle, in the city of Washington aforesaid. I purchased the property aforesaid, and at the same time had the legal title conveyed to William B. Matthews in trust.

To interrogatory No. 36 he said: At that time I was under orders to go to Arizona for duty, and the inconvenience of conveying the property would be very great with myself in Arizona and the complainant in Europe. I had already experienced great loss of time and inconvenience in other similar matters which I wished to avoid. This was my reason for leaving the property in the hands of a trustee.

To interrogatory No. 37 he said: I never had anything more than the equitable title, and the legal title never was transferred to me.

To interrogatory No. 38 he said: The money and funds with which the purchase was made belonged to me.

To interrogatory No. 39 he said: Never.

244 To interrogatory No. 40 he said: Never.

To interrogatory No. 41 he said: Yes; I think it was some time in the spring of 1880. I purchased an equity of redemption in lot A of E. A. Woodward's subdivision of lot 38, in square No. 210, in Riggs' subdivision of said square, in the city of Washington, D. C. I do not now remember the date when I sold the equity of redemption, but it was some time previous to the purchase of house No. 7 Dupont Circle; the house was known as 1447 Rhode Island avenue. The exact amount for which I sold my interest, subject to the incumbrances and less that amount, was between four thousand and forty-five hundred dollars.

To interrogatory No. 42 he said: Neither the purchase-money nor the money realized from the sale were ever subject to any antenuptial agreement, contract, trust, or trust fund of any kind whatsoever, more especially because no such agreement or trust
245 was ever mentioned, either verbally or in writing, between the complainant and myself.

To interrogatory No. 43 he said: It was not.

To interrogatory No. 44 he said: There was an incumbrance upon said lot A which was not paid off until after I had sold my interest therein.

To interrogatory No. 45 he said: I never had anything more than an equity of redemption interest in said lot A.

To interrogatory No. 46 he said: Do not remember more than to say that I think the gross amount was between four thousand and forty-five hundred dollars, my interest being, I think, somewhere near fifteen hundred or two thousand dollars.

To interrogatory No. 47 he said: I never did make any such promise or agreement or intimate anything of the kind to any person whomsoever.

To interrogatory No. 48 he said: I never did.

246 To interrogatory No. 49 he said: I never had any such conversation with Mrs. Celia D. Kenney, the complainant's mother, nor any conversation that either she or any one else could construe or twist into any such construction or even a hint of any such thing, direct or implied.

To interrogatory No. 50 he said: I never did.

To interrogatory No. 51 he said: Not a word, written or spoken, on such a subject ever passed between the said Mrs. Celia D. Kenny and myself.

To interrogatory No. 52 he said: I did not, and no one else ever did.

To interrogatory No. 53 he said: Never.

To interrogatory No. 54 he said: She was not.

To interrogatory No. 55 he said: She did not.

To interrogatory No. 56 he said: The taxes were paid by me from my own money,

247 To interrogatory No. 57 he said: After the joint purchase by John S. Walker and myself of the lots in block 24, Couch's addition to the city of Portland, Oregon, I was ordered to Arizona and Walker to Alaska. Walker and his wife were lost at sea by the wreck of steamship George S. Wright, and his interest vested in his minor heirs. The property also depreciated in value, and the streets were ordered to be filled, sidewalks constructed, and pavement laid. I could not sell and was compelled to pay a very large amount for these improvements. There was standing water in the lots, and the city ordered them to be filled up. I do not now remember the exact amount paid out, but believe that the aggregate so paid by me from my own money was largely in excess of the amount paid in the original investment. Meantime I sued for and obtained a division of the property and offered my share for sale.

248 To interrogatory No. 58 he said: In 1878 I finally effected a sale of all these lots for forty-five hundred dollars, and when the deeds, signed by both the complainant and myself, were forwarded the purchaser discovered a flaw in the title, and Part 1. the proceedings for a division had to go through the courts twice again before my title was perfected, and then my opportunity for investing the money had passed, and I was ordered from Nebraska to Fort Vancouver, W. T., near Portland, where the lots were located, and on looking at them myself I told my agent to raise the price of them.

To interrogatory No. 58 he said: She did.

To interrogatory No. 59 he said: She did not.

To interrogatory No. 60 he said: This is answered in No. 58, part 1.

To interrogatory No. 61 he said: They were sold separately, and the complainant could not possib-y know what the gross amount would be until she received the last deeds for her signature,
249 and these deeds were received and executed by her separately and at different times.

To interrogatory No. 62 he said: I never did.

To interrogatory No. 63 he said: There did not.

To interrogatory No. 64 he said: I did not, except casually, as referred to in answer to interrogatory No. 28.

To interrogatory No. 65 he said: I did not. To the best of my belief I first met said William B. Matthews, to know him, some time in the fall of 1881. I may have met him before, and presume he knew me long before I knew him.

To interrogatory No. 66 he said: On the contrary, I am quite sure that the said William B. Matthews and Lena Deller Carter had never met previously to the morning of my marriage with the said Lena Deller Carter, April 2nd, 1883, when I first introduced him to her.

To interrogatory No. 67 he said: I did not, and to the best of my knowledge and belief the said Lena Deller Carter did not
250 know that the complainant was going or that she had gone until after she had been gone some time.

To interrogatory No. 68 he said: I did not; on the contrary, I opposed her going.

To interrogatory No. 69 he said: She did rent house No. 7 Dupont Circle of me at a rental of ($80.00) eight- dollars per month, which she paid.

To interrogatory No. 70 he said: She rented the said house from me on the first of September, 1882. I had previously, through the agency of Thos. Waggaman, real estate dealer, been for two months trying to get a tenant for the house and failed to get one previous to Mrs. Carter.

To interrogatory No. 71 he said: The answer to this is in the answer to No. 70.

To interrogatory No. 72 he said: When I first suggested to Mrs. Carter that she take my house she declined, because she wished a smaller house or rooms.

To interrogatory No. 73 he said: After my suggestion to
251 Mrs. Carter that she take my house and she declined she continued unsuccessfully her efforts to secure a house or rooms more convenient for her.

To interrogatory No. 74 he said: The members of Mrs. Carter's family occupying the said house No. 7 Dupont Circle were, besides herself, three daughters, viz., Miss Isabella, Miss Virginia, and Miss Lena, and a granddaughter (also a young lady), Miss May Carter.

To interrogatory No. 75 he said: I was not, for Mrs. Carter was always very particular about that matter, and I do not remember of myself or any other gentleman being left alone with any of the young ladies during the time specified. I certainly never was and never saw Miss Lena aforesaid alone during the time specified.

To interrogatory No. 76 he said: I did.

To interrogatory No. 77 he said: I had previously made provis-

ion for the care of the complainant and my little daughter,
252 who was in her charge; my life was insured for all that I could get and assigned to my little daughter; my army assurance was assigned to the complainant and my daughter, and all the time up to the very date of my leaving the United States I gave to the complainant, through my daughter aforesaid, one hundred and fifty dollars per month, nearly three fourths of my pay as a retired officer. I had made arrangements (and had so advised the complainant) to continue this allowance, which was ample for the support of both, during the education and minority of my daughter aforesaid. When, therefore, through the perjured testimony of the complainant, apparently corroborated by my uniform kindness and indulgence of her, the divorce which I had procured from her was set aside a great wrong was perpetrated upon the said Lena Deller Carter Nickerson, my wife; she was to be left alone, neither a married nor, in one sense, a single woman; her mother was an
253 aged woman and both the latter and a sister invalids, and both of whom are, I believe, since deceased. I had once before told my wife, *née* Carter, that I thought I ought to settle the house on her, as I was then speculating in stocks more than I had ever before been, but she objected that as we were only just married it might be inferred that she had some mercenary object in view in marrying me. It is my recollection and belief that the deeds were made out and carried to her simultaneously with her information that it was to be done. These were my general reasons for making the transfer, aside from the considerations named in the instrument.

To interrogatory No. 78 he said: It was not, and, so far from there being any such conspiracy, Matthews aforesaid was dallying around about the matter so long that I got out of patience and told him that I was going to remain with him until it was completed, and I did so. No one else ever knew of the matter.

254 To interrogatory No. 79 he said: When the deeds were being made out I told Matthews, aforesaid trustee, that I should demand a money consideration. He objected that it was unnecessary, but I insisted. The money consideration, therefore, was embodied, demanded by me, and paid by the said Lena Deller Carter Nickerson aforesaid as set forth in said deeds.

The said Azor H. Nickerson, being still under oath, made answer to the cross-interrogatories as follows:

To cross-interrogatory No. 1 he said: Azor H. Nickerson; aged forty-seven years; residence, Philadelphia, Penn.; occupation, soldier, out of employment, and undergoing medical treatment at Tharold, Canada.

To cross-interrogatory No. 2 he said: I am not in the Army of the United States. In answer to the latter part of your question I embody as a part of my answer the following extract from the Official Record of the War Department, which is sworn to by
255 me as being, to my own knowledge, a correct transcript of said record and also the facts:

Extract.

"Statement of the military service of Azor H. Nickerson, of the United States Army. (Signed by Adjutant General R. C. Drum and certified to by Robert T. Lincoln, Secretary of War.)

" * * * To June 28th, 1882, when retired from active service, having been found by a retiring board incapacitated for active service, by reason of gun-shot wounds received in the battles of Antietam and Gettysburg, as described by the medical officers, members of this board, and from other injuries incident to the military service, and that these injuries have been aggravated by exposure and arduous service in the several Indian campaigns in Oregon, Idaho, California, and Arizona from the close of the rebellion until 1875 and in the Big Horn and Yellowstone expeditions against the Sioux Indians in 1876."

Upon this record the President of the United States decided
256 that I had earned the right to remain in or "get out," as you are pleased to put it, and, as I chose to go, he accepted my resignation in November, 1883, and gave me an honorable discharge.

To cross-interrogatory No. 3 he said: I think my resignation was accepted on the 15th of November, 1883. Since that date I have had no other occupation than that of an unemployed soldier, undergoing medical treatment at Tharold, Canada.

To cross-interrogatory No. 4 he said: I owned at different times lots in block 24, lots in block 59, all of blocks 145, 146, and 160, Couch's addition to the city of Portland, and lands in King, Thurston, Lewis, and Pierce counties, W. T. I cannot now specify the time the purchases were made, but as blocks 145 and 146 only brought twenty-five hundred dollars, out of which the broker's commissions were paid, I could not have purchased much property anywhere with this money alone.

To cross-interrogatory No. 5 he said: My legal residence on the 31st of May, 1883, was Philadelphia, and I think I was there
257 then, but possibly I might have been either there — in Washington or New York. I do not know how long I remained or where I went next.

To cross-interrogatory No. 6 he said: I do not remember, but think it was in 1881. I probably met him many times before I knew him, and he undoubtedly knew me long before I knew him. It was in Washington.

To cross-interrogatory No. 7 he said: He was. He was employed in different rooms, and generally, I believe, in a building opposite the War Department, where I was.

To cross-interrogatory No. 8 he said: I do not know when nor at whose instance he was appointed nor when he left.

To cross-interrogatory No. 9 he said: I was quite intimate with Matthews. I found him to be an intelligent man and I believed him to be one in whose integrity and honor I could trust. I have not heard from him for more than a year and a half.

To cross-interrogatory No. 10 he said: I do not know, but
258 do not believe he visited there at all prior to complainant's departure for Europe. However, he, Matthews, knew me long before I knew him.

To cross-interrogatory No. 11 he said: I do not know that Matthews was acquainted with complainant at all.

To cross-interrogatory No. 12 he said: Yes.

To cross-interrogatory No. 13 he said: Yes; August.

To cross-interrogatory No. 14 he said: I was there twice and remained one or two days each time, perhaps longer the first time; I cannot remember the dates of the month.

To cross-interrogatory No. 16 he said: I accompanied General and Mrs. Breck the first time, and the second time I went alone. I cannot remember any one who returned with me; no one that I ever met before.

To cross-interrogatory No. 15 he said: Twice.

To cross-interrogatory No. 17 he said: She did not.

To cross-interrogatory No. 18 he said: In the sense in
259 which your question is put, I was not at the springs with Miss Carter any more than I was at the springs with Mrs. Mason, Carson, or any one else whom I knew. Mrs. Carter was there with her two daughters, one of whom was Miss Lena D. Carter.

To cross-interrogatory No. 19 he said: I remember most positively that I never did.

To cross-interrogatory No. 20 he said: I do not know whether she was there all the time or not. I did not go for the express purpose of seeing Miss Lena D. Carter.

To cross-interrogatory No. 21 he said: It depends upon what one calls "particularly attentive." I do not think I was. So far from often walking alone with her and sometimes with her elder sister, I almost invariably met with the two together. If I ever walked alone with her or her sister it was a very rare occurrence and purely accidental.

To cross-interrogatory No. 22 he said: I do not now remember
to have been walking alone with Miss Lena D. Carter, but it
260 is possible that I may have met her and walked a block or so with her, and it is also possible that I might then have met Mrs. Mason aforesaid.

To cross-interrogatory No. 23 he said: I attended the Ascension Church with the two sisters until one was too ill to go, and then I did not go and do not recollect of ever having been to church alone with either.

To cross-interrogatory No. 24 he said: It is my handwriting and had especial reference to a little girl of ours who had died, to whom we were both devotedly attached.

To cross-interrogatory No. 25 he said: I have neither letters nor anything else that ever belonged to the complainant.

To cross-interrogatory No. 26 he said: Whatever the amount is that is set forth in the deed, I do not know whether she got the money from her brother or her sister; she frequently had money from both.

To cross-interrogatory No. 27 he said: Between twenty-three and twenty-five years. She was not in any business that I am aware of.

261 To cross-interrogatory No. 28 he said: Not that I am aware of.

To cross-interrogatory No. 29 he said: I may have been ill, as stated, but I certainly never said anything of this kind, nor do I suppose or believe that there is any person in the world idiot enough to believe that I ever did.

To cross-interrogatory No. 30 he said: I do not now remember whether or not I introduced Mrs. Carter and her daughters, including Miss Lena aforesaid, to Mrs. Mason and Mrs. Carson, or whether Mrs. Carter or her daughters introduced me to them. I may have introduced them or they may have introduced me.

A. H. NICKERSON.

Which said testimony was reduced by me into writing and read over to and signed by said witness in my presence, and is here annexed to the writ of commission, closed up under my seal, and returned into said court.

Witness my hand and official seal this 21st day of November, A. D. 1885.

[SEAL.] L. H. COLLARD,
U. S. C. Ag't, Examiner.

262 In the Supreme Court of the District of Columbia, the 10th day of April, 1885.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } No. 9027, Equity Docket 24.

The President of the United States to L. S. B. Sawyer, Esq., San Francisco, California, Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Celia D. Kenney and Emma C. D. Nickerson as witnesses for the complainant in the above-entitled cause upon the interrogatories annexed to this commission; and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witnesses to come before you and then and there examine them on oath or affirmation upon the said interrogatories, and reduce their testimony into writing, to be signed by said witnesses, and, having so done, annex the same to this writ, closed up under seal,

263 and make return thereof into court with all convenient speed.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

Testimony of Celia D. Kenny.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON, LENA D. CARTER, Sometimes Called Lena C. Nickerson, & William B. Matthews. } Equity No. 9027.

Interrogatories to be propounded to Mrs. CELIA D. KENNY, a witness to be produced, sworn, and examined on the part of the complainant in the above-entitled cause, and to be read in evidence at the hearing of said cause on behalf of the complainant, Emma C. D. Nickerson.

1st. What is your name, age, and place of residence?

2d. If the complainant, Emma C. D. Nickerson, is related to you, state the relationship..

264 3rd. If you know the defendant, Azor H. Nickerson, state how long you have known him.

4th. Do you know of the marriage relation heretofore and now existing between the said complainant, Emma C. D. Nickerson, and the defendant, Azor H. Nickerson? If so, state when and where the marriage between them was solemnized.

5th. Did you at any time prior to said marriage have any conversation with the defendant, Azor H. Nickerson, in regard to said marriage? If so, state when and where such conversation was had, how you came to have the conversation with said Nickerson; state fully all the circumstances that led to the interview between you and the defendant Nickerson, as well as what was said between you touching the contemplated marriage with your daughter.

6th. In any of the conversations you had with the defendant Nickerson what did he inform you or say touching any
265 agreement entered into between him, said Azor H. Hickerson, and the complainant looking to a settlement, if any, he was to make upon the said complainant, upon their marriage, for the purpose of securing a permanent home for herself and any children they might have born of such marriage, to be secured to the complainant in her own right? If so, please state fully and particularly all of the conversation or conversations that passed between you and the said Azor H. Nickerson on that subject.

7th. State, if you please, how he came to converse with you on that subject, if you know.

8th. State, also, whether, prior to your having any of such conversations with the defendant Nickerson, you had conversed with the said complainant touching the same subject; if so, state what it was.

9. Have you at any time, and, if so, when, since the marriage between the complainant and the said Azor H. Nickerson, had any

conversation with said Nickerson on the subject of said agreement? If so, state what the conversation was.

266 10. Have you, at any time before or since said marriage, received any letters from the defendant, Azor H. Nickerson, relating to said agreement and provisions to secure a home for said complainant; if so, have you those now? If you have, please attach them as exhibits to this your deposition.

11. Have you ever seen the defendant, Azor H. Nickerson, write and are you familiar with his handwriting? If so, state whether the letters attached to your deposition, purporting to be written by him, are in his handwriting or not.

12. Have you any letters written by said defendant, Azor H. Nickerson, to complainant with the request that the same be forwarded to you? If so, please attach said letter or letters to this your deposition.

13. If the complainant, Emma C. D. Nickerson, visited her sister in California in the spring and summer of 1878 state who came there with her and where did they stop, if you know.

267 14. State, if you please, what was the conduct of Maj. Nickerson on that occasion towards his wife?

15. State if the complainant visited you while on the visit to her sister, and how long she remained with you; state fully all that occurred, if anything, while she was with you in the summer of 1878.

16. State, if you please, whether or not, in December following 1878, while they were at Fort Vancouver, Maj. Azor H. Nickerson telegraphed you that the complainant was very ill, and to come on; if so state fully and in detail all the facts and circumstances relating to the time you reached there, the complainant's condition, and the conduct of the defendant, Azor H. Nickerson, towards the complainant; state all he said and what he did in his attention to her.

17. Did Maj. Azor H. Nickerson at any time complain to you of any domestic unhappiness existing between himself and the complainant?

268 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JOHN J. JOHNSON AND
W. W. WILSHIRE,
Solicitors for Complainant.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } No. 9027.

Now comes the defendant, AZOR H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry

Wise Garnett and Conway Robinson, Jr., her solicitors, and
269 now comes also the defendant, William B. Matthews, in proper person, and without in any way or manner waiving, but hereby expressly reserving and insisting on, all the objections and exceptions and on every one of the same taken, noted, or filed by them or by any of them to the interrogatories propounded to Celia D. Kenny as a witness on behalf of the complainant in the above-entitled cause, do nevertheless now come and file the following cross-interrogatories in order that the said cross-interrogatories may be propounded to the said witness, Celia D. Kenny, which said cross-interrogatories are hereto annexed and are as follows:

Cross-interrogatories to be propounded on behalf of the defendants to Mrs. Celia D. Kenny, a witness to be produced, sworn, and examined on the part of the complainant in the above-entitled cause.

1. If in answer to the interrogatories propounded to you in your examination-in-chief you mention any conversation or conversations as having taken place at any time between yourself and
270 Major Azor H. Nickerson, then state the exact time or times and the exact place or places when and where each and every such conversation or conversations took place.

2. If you have mentioned any conversation or conversations between Azor H. Nickerson and yourself, then have you, in stating each of said conversations, given the exact language which was used in said conversation by said Azor H. Nickerson and the exact language which was used by you? If in any instance or any particular you have not done so, then are you able to do so?

3. If you say that in any instance or in any particular you have not given the exact language used and that you are not able to do so, then state why you are not able to do so.

4. If you say that in any instanee or in any particular you have not given the exact language used, but that you are able to do so, then state what was the exact language that was used in such instance or in such particular.

271 5. If, in answer to the interrogatory propounded to you in your examination-in-chief, you state anything about your objecting to the marriage of the complainant to the defendant, Major Azor H. Nickerson, because of his being an officer in the army, dependant upon his salary as such officer in the army for the means of supporting her, and that you would not consent to said marriage unless he made a settlement upon her or secured to her a permanent home for herself and any children she might have born of such marriage, then state whether or not you have any other daughter married to any army officer; if yea, what is the full name of such daughter and the full name and present rank in the army of the officer she married, and also what was the rank of such officer at the time that he married such other daughter of yours?

6. What is the salary and rank now of the officer that married such other daughter of yours and what was his salary and rank at the time that he married her?

272 7. Is he not a "lieutenant," and was not his salary at the time that he married your other daughter much smaller than the salary of Major Azor H. Nickerson at the time that the latter married the complainant and at the time Azor H. Nickerson became engaged to the complainant?

8. Was there any marriage settlement, portion, or trust fund set apart by such other officer at the time that he married your other daughter or at any time prior thereto? If so, state fully and specifically what it was, the character of the property, where situated, located, or to be found, of what it consisted, and its value, and state all the details of such settlement.

9. What salary was Major Azor H. Nickerson receiving and what was his rank at the time that he engaged himself to the complainant and what at the time that he married her?

10. Was not your other daughter married to such other
273 officer without any marriage settlement being made by him upon such other daughter?

11. Was not his marriage to such other daughter consummated with your consent?

12. Is the complainant your daughter; if yea, what is her age?

13. Was she not born upon July 24th, 1847?

14. If you have mentioned any marriage settlement, portion, trust fund, agreement, or promise made or agreed to by or between the complainant and the defendant, Azor H. Nickerson, or between you and him at any time relative to any property whatever, then state what property, its character, and where situated, located, or to be found, whether real or personal estate. Give a full description of the same, the numbers of the lots or blocks, the then surroundings of the same, stating, however, only what you know of your own personal knowledge.

274 15. If in your answer to the aforegoing interrogatories and cross-interrogatories you have stated any fact or facts not known to you of your personal knowledge and about which your information has been merely derived from others, so that only part of the facts testified to by you are known to you of your own personal knowledge and the others merely by hearsay, then state fully all of such facts so testified to by you as are known to you of your own personal knowledge.

ENOCH TOTTEN, — *A. H. N.*
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, Sometimes Called Lena C. Nickerson, & William B. Matthews, Defendants. } No. 9027.

275 Interrogatories to be propounded to Emma C. D. Nickerson, a witness to be sworn and examined on the part of the complainant in the above-entitled cause, said witness at present residing in San Francisco, in the State of California.

1. State your name, age, and present residence.
2. Are you complainant in the above-entitled cause?
3. Are you the wife of the defendant, Azor H. Nickerson? If yea, state when and where were you married to said Nickerson.
4. Previous to your said marriage state where you were residing.
5. At the time of your marriage was your father alive? And state his name.
6. How long had you known the defendant, Azor H. Nickerson, previous to your marriage?
7. At the time and previous to the marriage where did you reside?

276 8. State, if you please, whether your mother and family generally were aware of the relations *sub*sisting between yourself and the defendant Nickerson previous to and about the time of your said marriage; if so, whether your family, and especially your mother, approved of and in any manner encouraged the marriage then in contemplation between you and which subsequently took place.

9. Was not the contemplated marriage a matter of conversation between yourself and your mother?
10. At the time of your intermarriage was the defendant, Azor H. Nickerson, possessed of any property; and, if so, in what did that property consist and where located?
11. State, previous to your marriage and whilst it was in contemplation, if, in any conversation with reference to your then contemplated marriage, the defendant, Azor H. Nickerson, agreed to give you, in consideration of said marriage, any property; and, if

277 any, what description of property and where located, and for what purpose in the event of the taking place of said marriage between yourself and the said defendant Nickerson.

12. State if said defendant went with you and pointed out certain property he was the owner of prior to said marriage, where the same was located, where it was, and the number of the blocks.
13. State also whether or not said defendant, Azor H. Nickerson, agreed to convey the same to you after said marriage as and for a marriage settlement; if so, state fully and all that he did say relating to any promise or agreement with you touching and growing out of the contemplated marriage.

14. State fully what was said, if anything, about selling said property and reinvesting the proceeds; state fully and in detail all
278 that was said about giving the property as and for a marriage settlement, if anything was said, and how the same was to be sold and the proceeds reinvested from time to time, and what was to be done ultimately with the proceeds arising from time to time from the investment of the original proceeds from said blocks 145 & 146 and their reinvestment.

15. State if your mother objected to said marriage upon learning of your engagement, and whether or not she visited Portland for the purpose of preventing said marriage, but subsequently, in a conversation with defendant, she withdrew her objections, and state, further, what happened, if you know, that led her to withdraw her objections.

16. If there was any agreement that said investments should be changed from time to time and reinvested, state whether or not by so changing the investments you were to continue to hold the interest in the proceeds, as orginally agreed and understood—that is to say, to hold them as the gift in consideration of marriage.

279 17. At the time of your marriage where was the defendant stationed, and after your marriage where did you and defendant, Azor H. Nickerson, go?

18. When did you and defendant leave Portland, Oregon, and remove to Drum barracks, near Los Angeles, California, and how long did you remain there before the defendant was assigned to duty at various military posts of the United States in Arizona, Nebraska, and Washington Territory?

19. When did you remove to Washington city, in the District of Columbia, and to what duty was the defendant, Azor H. Nickerson, assigned?

20. In all these various changes of stations or posts did you accompany and live with the defendant until about July, 1880; if so, what was the conduct of the defendant towards you during all that period?

21. State when you left here to go to New York to sail from
280 that place for Europe was it not with the full consent and concurrence of the defendant. State fully and minutely all the facts, circumstances, and conversations that occurred between you and the defendant, Azor H. Nickerson, about your going abroad, what the purpose and object was in going, and when did you sail.

22. Did the defendant accompany you to New York; if so, what hotel did you both stop the night before sailing, who purchased the tickets, and did he take you and daughter on board the ship, and in what manner did he bade you good-bye?

23. As the vessel cast loose from her moorings what did he do or say?

24. Did or did not defendant introduce himself to a gentleman on board the steamer who was about to make the passage and then requested this gentleman, after presenting you to him as his, the defendant's, wife, to look after you on the voyage?

281 25. While abroad did the defendant make remittances to you for your support, and up to what period did he write to you last?

26. After he ceased to write to you did he continue to send you remittances by drafts to your order?

27. Did you write to him for an explanation of his silence; if so, did you receive answers?

28. Are the exhibits hereto attached and marked E. C. D. N. Nos. 1, 2, 3, 4, 5, and 6 true copies of the letters written by you to the defendant, Azor H. Nickerson, and which he did not answer?

29. State while in Europe — you executed the deeds mentioned in the fifth paragraph of the bill of complaint, which was read by you and to you before you signed said bill, and return-said executed deeds and at the same time write the letter to the defendant, as therein set forth.

282 30. The defendant, Azor H. Nickerson, in his answer has made some allusion to a separation he alleges that existed in 1878. Please state if there is any truth or foundation in fact for any such insinuation, and state fully all you know touching any such insinuation as made by the defendant.

31. State in whose handwriting is the body and the signature to the paper hereto attached and marked E. C. D. N. No. 7.

32. State also in whose handwriting is the body of the letter hereto attached and marked E. C. D. N. No. 8, and to whom was said letter written, and in whose handwriting are the three lines following the postscript and initials A. H. N.

33. If said Exhibit No. 8 was written to your mother was the same mailed to her; and, if so, how did you again get said exhibit into your possession?

34. State in whose handwriting are the bodies and the signatures thereto of the following letters; also the handwriting to your

283 address hereto attached and marked, respectively, E. C. D. N. Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, & 40.

35. Were all the said letters—those with envelopes as well as those without any—received by you in due course of mail while in Europe?

36. Are you acquainted with Lena D. Carter, one of the defendants in this cause? If so, state, as near as you can, when you became acquainted with her; how that acquaintance was brought about. State fully all the circumstances connected therewith.

37. If she visited your house while in this city state who came with her. If the defendant, A. H. Nickerson, brought her there state all he said upon the subject of her coming there to visit you. Give the whole of the conversations on that subject.

38. If you stopped at Fortress Monroe in 1879 on you- way from Cobb's Island who met you at said Fortress Monroe? And if you saw Lena D. Carter there state who accompanied —, if you know.

284 39. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the

subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JOHN J. JOHNSON AND
W. W. WILSHIRE,
Solicitors for Complainant.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendant-. } No. 9027.

Now comes the defendant, Azor H. Nickerson, by Enoch Totten, his solicitor, and now comes the defendant, Lena D. Carter, by Henry Wise Garnett and Conway Robinson, Jr., her solicitor-, and
285 now also the defendant, William B. Matthews, comes in proper person and, without waiving in any way or manner, but hereby expressly reserving and insisting on all the objections and exceptions and on every one of the same taken, noted, or filed by them or by any of them to the interrogatories propounded to E. C. D. Nickerson, the complainant, as a witness on her own behalf, in chief, in the above-entitled cause, do nevertheless now come and file the following cross-interrogatories in order that the same may be propounded to the said witness, E. C. D. Nickerson, which said cross-interrogatories are hereto annexed and are as follows:

Cross-interrogatories to be propounded on behalf of the defendants to Emma C. D. Nickerson, a witness to be summoned and examined on the part of the complainant in the above-entitled cause.

1. If, in answer to the interrogatories propounded to you in your examination-in-chief, you state your age, then state the exact date upon which you were born. Were you not born on the 24th day of July, A. D. 1847?

286 2. If, in answer to the interrogatories propounded to you in your examination-in-chief, you state that you ever were engaged to or agreed to marry the defendant, Azor H. Nickerson, then state the exact time and place when and where you did so engage yourself to marry him.

3. Did you not engage yourself to said Azor H. Nickerson and agree to marry him at Dallas city, Oregon, on April 21st, 1870?

4. Were you not at the time that you engaged yourself to said Azor H. Nickerson en route to Idaho with a party of officers and their wives, and were you not at least a hundred miles from Portland, Oregon, at the time that you so engaged yourself to him, and was not your engagement announced whilst on this excursion, and before your return to Portland, Oregon, again; were you not many hundred miles from there?

5. Did you ever give said Azor H. Nickerson a ring with the inscription inside of it, "April 21st, 1870," and was not the same
287 given to him by you as a commemoration of the date of your engagement to him?

6. If, in answer to the interrogatories propounded to you in your examination-in-chief, you state that Major Azor H. Nickerson owned property at the time of your marriage to him, then describe and state fully and in detail each piece and all the pieces of property he owned at the time of said marriage; give the numbers of the lots and blocks, state where each was located, as well as the situation and surrouudings of each lot or piece.

7. Has all of said property owned by him at the time of your marriage to him been sold by him? If so, state as nearly as you can when each piece was sold, to whom the same was sold, for how much, and how much of the proceeds of each of said sales he, the said Azor H. Nickerson, put into other or subsequent investments, and specify fully and in detail each and every investment in which
288 he put, used, or invested any part of the proceeds of any of said sales, and be particular to state the exact amount of the proceeds of each of said sales which was so put, used, or invested in every such investment, stating only what you know of your own personal knowledge.

8. If, in answer to the interrogatories or cross-interrogatooies previously propounded to you, you mention blocks numbered 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon, and state that Major Azor H. Nickerson promised to convey to you all of said blocks 145 and 146, in said Couch's addition to the city of Portland, Oregon, and to erect thereon a suitable dwelling-house for a home for yourself and children, then state whether or not said blocks were not a long distance from any residence and whether or not the same were not near what was known as Couch's lake or swamp, on low ground near the river.

289 9. Did not each of said blocks numbered 145 and 146 contain eight building lots, making 16 building lots in said two blocks, each of the size usually used for a dwelling?

10. Were not said blocks 145 and 146 in point of fact an abandoned brick yard, surrounded by logs and stumps and unsuitable for building purposes?

11. Did not Major Azor H. Nickerson own, at the time of your marriage to him, two very handsome building lots in the block adjoining the one where your aunt was living, surrounded by other dwellings and in a location suited for residence purposes; if yea, then when and for how much and to whom did he sell said lots on the park near your aunt? Did he not sell them in 1875 after coming to Omaha, Nebraska?

12. Did not Major Azor H. Nickerson also own block No. 160, in said Couch's addition to the city of Portland, Oregon, and
290 was this block numbered 160, although a long distance from any residence, still on high ground, back from the river, and much more suitable for residence purposes than said blocks numbered 145 and 146?

13. Did Major Azor H. Nickerson ever own any interest in lots 3, 4, 5, 6, 7, and 8, in block No. 24, in said city of Portland, Oregon, and did he after having had a portion of said lots last above-mentioned ever own in severalty lots 7 and 8 and the north half of lot 6, in said block No. 24, in said city of Portland, Oregon?

14. If, in answer to the interrogatories propounded to you in your examination-in-chief, you mention or state that Major Azor H. Nickerson purchased or owned at any time after your marriage to him any lots or blocks in Portland, Oregon, or elsewhere, or ever purchased or owned any interest in any such lots or blocks after said marriage, then state fully and specifically the exact Nos.
291 of the lots or blocks so purchased or owned by him and where the same were located, and the amount he paid for each and every such lot or block so purchased by him after said marriage; how and through whom he paid for the same; whether he paid for the same entirely in cash or not, and, if any part was not paid in cash, then how such part was paid. State fully the terms upon which each of said purchases were made, the length of the deferred payments, if any, and in what manner and through whom such deferred payments were made, stating only, however, what you know of your own personal knowledge.

15. Were not all of the blocks and lots owned by Major Azor H. Nickerson at the time of his marriage to you or subsequent thereto, in Portland, Oregon, afterwards sold by him and conveyed away, and did you not unite in the deeds for each and all of the same to the purchasers thereof? If yea, then state when and to whom each separate piece, lot, or block was sold and for how much;
292 whether or not the purchase-money therefor was placed in bank with his other funds or invested directly in any other way or investment. If any of the purchase-money of any of said lots was invested directly or indirectly in any other property, then state exactly how much and in what investment the same was used or invested, stating, however, only what you know of your own personal knowledge.

16. When did he sell said block numbered 160?

17. Did he not sell all the real estate he had in Portland, Oregon, except the lots in block 24, in said city of Portland, Oregon, which he owned jointly with Major Walker, and was he not prevented from selling those as soon as he otherwise would have done, 1st, by said Walker's being lost at sea; and, 2nd, by reason of the delays in obtaining a partition thereof with said Walker's minor heirs; and, 3rd, by the depreciation in prices pending the suit for partition?

293 18. After the division of said lots in said block 24 was made, did not Major Azor H. Nickerson sell his portion thereof, in the spring of 1878, for forty-five hundred dollars?

19. Did you not, as Major Nickerson's wife, sign and seal the deed for the said sale and transfer of these lots to one George James for the consideration above named and at the time specified?

20. Was not the said deed, after it had been so signed and sealed

by you, sent to Major Azor H. Nickerson's agent, one P. W. Gillette, to be by him delivered?

21. Was not the said sale defeated solely because an examination of the title showed a defect in the decree of partition, by reason of which it had to pass through the courts again?

22. When that sale was made had not Major Nickerson subscribed $4,500.00, the full amount of the purchase-money
294 thereof, and did he not propose to invest it in the shares of stock in a cattle pool which he had formed in Nebraska for the purchase of a herd of Texas cattle?

23. Where were lots 3, 4, 5, 6, 7, and 8, in block No. 24, in Couch's addition to the city of Portland, Oregon, situated?

24. Were they not all located near the head of Couch's Lake or swamp, on low grounds?

25. Were not lots 7 and 8 and the north half of lot 6, in said Couch's addition to the said city of Portland, quite inaccessible, and is it not a fact that they were at a distance from any dwelling-houses, on low ground, near said Couch's Lake or swamp?

26. Did not Major Azor H. Nickerson frequently have to pay large amounts for street improvements on account of said lots and for filling on said lots themselves?

295 27. Did Major Azor H. Nickerson ever sell blocks numbered 145 and 146, in Couch's addition to the city of Portland, in the State of Oregon? If yea, then state when, for how much, and for what price, and to whom.

28. Did he invest the proceeds thereof or any part thereof in any other investment or investments? If yea, then state the exact and precise investment or investments in which he invested the same, how much thereof he invested in each investment, the date and dates on which he so invested the same, the character of such investment or investments, whether in real property or personal property, where such property was situated and to be found, an exact description thereof, and through whom, if any one, such investment or investments was or were made, and the full names of each and all persons with whom he had any dealings or transactions connected with such investment or investments, stating, however, only what you know of your own personal knowledge.

296 29. Did Major Azor H. Nickerson ever sell lots numbered 7 and 8 and the north half of lot numbered 6, in block numbered 24, in Couch's addition to the city of Portland, Oregon? If yea, then state when, for how much, and for what prices, and to whom.

30. Did he invest the proceeds thereof or any part thereof in any other investment or investments? If yea, then state the exact and precise investment or investments in which he invested the same, how much thereof he invested in each investment, the date or dates on which he so invested the same, the character of such investment or investments, whether in realty or personalty, where such property was situated and to be found, an exact description thereof, and through whom, if any one, such investment or investments was or were made, and the full names of each and all persons with whom

he had any dealings or transactions connected with such investment or investments, stating, however, only what you know of your personal knowledge.

297 31. If any of the investments mentioned by you were at any time changed and the property sold by Major Azor H. Nickerson and the proceeds thereof or any part of the proceeds thereof at any time reinvested in any other investment or reinvestment, then state fully the precise and exact investment or reinvestment in which the same was so invested or reinvested, the character of the same, and an accurate and full description of the property in which the same was so invested or reinvested, how much was invested or reinvested therein, and through whom the same was managed, giving the names of all persons with whom said Azor H. Nickerson had dealings in connection therewith, stating, however, only what you know of your own personal knowledge.

32. If, in answer to the fifteenth interrogatory propounded to you in your examination-in-chief, you state that your mother, after she visited Portland, Oregon, had a conversation with the
298 defendant, Azor H. Nickerson, in which she withdrew her objection to your marrying him, then state whether you were present at any such conversation.

33. If all of the facts to which you have testified are not known to you personally and of your own knowledge, but are some of them known to you only by hearsay and by your having heard them from other persons, then specify fully all of said facts so testified to by you which are known to you personally and of your own personal knowledge.

34. If you have omitted or failed to answer any of the questions which have been asked of you, is it because you have no personal knowledge thereof?

ENOCH TOTTEN,
Counsel of Def't, A. H. N.
HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Sol'rs for Lena D. Carter.
WM. B. MATTHEWS, *P. P.*

299 In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON *vs.* AZOR H. NICKERSON *et al.*

I, L. S. B. Sawyer, of San Francisco, California, do hereby certify that I did, on the 25th day of April, A. D, 1885, cause Celia D. Kenny and Emma C. D. Nickerson, the witnesses named in the annexed commission, to come before me in said city of San Francisco, in the State of California, and did then and there first administer an oath to said witnesses on the Holy Evangels of Almighty God to tell the truth, the whole truth, and nothing but the truth in the cause of Emma C. D. Nickerson *vs.* Azor H. Nickerson *et al.*, equity No. 9027, in the supreme court of the District of Columbia, and the

said witnesses, being under oath as aforesaid, did answer the interrogatories and cross-interrogatories appended to said commission as follows:

Direct Interrogatories Propounded to Celia D. Kenny.

300 Int. 1: To the first interrogatory she saith:

Ans. Celia D. Kenny; 58 years of age; reside at San Francisco, California.

Int. 2. To the second interrogatory she saith:

Ans. She is my eldest daughter.

Int. 3. To the third int. she saith:

Ans. I am well acquinted with him; have known him since 1868.

Int. 4. To the fourth int. she saith:

Ans. Yes, sir, I do; on the 13 August, 1870, at my residence in the city & county of San Francisco, California.

Int. 5. To the fifth int'y she saith:

Ans. I did; I had a long talk with the defendant, Azor H. Nickerson, upon the subject of his wishing to marry my daughter, the plaintiff, Emma C. D. Nickerson, at Portland, Oregon, in the early part of June, 1870. I have resided with my family in San Franciso since May, 1868. I think in March, 1870, my daughthr, the plaintiff, went to Portland, Oregon, on a visit to her aunt, my
301 sister, Mrs. Trevett, where she met the defendant, Azor H. Nickerson. In April or May, 1870, my sister and daughter wrote to me of an intimacy fast springing up between the plaintiff and the defendant, Azor H. Nickerson, and that he had proposed marriage to my daughter. I was opposed to this and wrote back that I could not consent. My reason for opposing this marriage was that I designed that Emma should marry a gentleman who would furnish her a comfortable home and settle in San Francisco. After having written more than once to my sister and daughter objecting to this contemplated marriage and receiving no satisfactory answer, early in June, 1870, I went to Portland, Oregon, in order to inform myself of the condition of affairs regarding this engagement and to insist on its being broken off. On my arrival I went to my sister's house. The same day the defendant, Azor H. Nickerson, called and invited me to drive out with him. At 4 o'c. p. m., he came with a horse and buggy and I went with him. He then informed me that my daughter Emma several times had said to him that I was
302 opposed to their marriage and asked my reasons. I replied that I was anxious that Emma should, when married, settle and have a home at San Francisco, but my principal and controlling objection was that army officers, being subjected to orders from their superiors in command, were liable to frequent change from place to place, and in many instances had no permanent local habitation for their families, and with me that was a very serious objection. The defendant, Azor H. Nickerson, then informed me that he had already made an agreement with my daughter upon their engagement that after their marriage he would secure her a permanent home. He said that he was the owner of two blocks of town lots in Portland,

Oregon; that he had promised and agreed with my daughter, in the event of their marriage, to give these two blocks of land to her for the purpose of securing in her own right a permanent home, and as soon as these blocks could be disposed of for a sum sufficient
303 to pay for a suitable and comfortable home for her he would dispose thereof and purchase and convey to her such a home. He also promised me that if I so desired I should select the place where that home should be purchased and that he would put the property in her name. He further said that if these blocks, which he promised and agreed to give to Emma after they were married, did not sell for enough money to purchase a suitable home for Emma he would sell and reinvest in some other part, where property would improve in value more rapidly, for Portland property would improve and these blocks would increase in value, and so soon as he could realize a sufficient sum for the sales of this property to build a suitable home for Emma he would do so any carry out his promise and agreement with my daughter—that these blocks he had promised to give to her after they were married. From these positive assurances from the defendant, Azor H. Nickerson, that my daughter
304 would be provided with a home of her own and in her own right I withdrew my objection and consented to their marriage, for my daughter, altho' of age, wanted my consent and approbation.

Int. 6. To the sixth int'y she saith:

Ans. After giving me the information and making the promise and agreement stated by me as in my answer to interrogatory fifth set forth, he further stated to me that had said the same things to my daughter; that he would sell these blocks and buy with the money realized for her and hers elsewhere other lots or property that would increase in value more rapidly; this he would do as soon as he knew where it would be best to reinvest, and that the blocks or the proceeds from the sale thereof were to be wholly set apart to the buying and providing her a suitable home. He said she had seen the property and he had agreed and promised it or its proceeds to her and hers, and that she would have a permanent
305 home of her own, in her own name, regardless of army changes, adding "Em. knows all about this and has seen the lots." "I have agreed to do this and made to her the same promises," were his words.

Int. 7. To the 7th int'ry she saith:

Ans. I know full well why he had this conversation with me and why he made this gift to my daughter. My letters from San Francisco to Mrs. Trevitt and my daughter, in which I decidedly objected to her marriage with Azor H. Nickerson, because he could bestow no permanent home upon her, were shown to him and he was fully aware of their contents. Besides, there were other available parties in San Francisco who were paying their respects to my daughter and who would have provided her with a comfortable home. Objecting to their being married, I went to Portland with the idea of preventing such marriage and returning to San Francisco with my daughter. It was to forestall this my resolution and

306 gain his object and obtain my consent to their marriage that he gave her this property and made this antinuptial gift.

Int. 8. To the eighth int'y she saith:

Ans. I had my drive and long talk with Azor H. Nickerson, the defendant, on the same day I arrived at Portland. There was nothing said between my daughter or any other person and myself before this drive upon or about property. She did, however, in one of her letters to me a short time before this, say that Azor H. Nickerson had lately bought some blocks of land in Portland which he thought in time would be valuable.

Int 9. To the ninth interr'y she saith:

Ans. I have; I often met Captain Nickerson after the marriage, and he always kept me informed regarding the Portland property. He and my daughter were at our house in San Francisco in 1871, on their way to Arizona, and I think that it was before that time that the two blocks of land, No. 145 & 146, which he had
307 given to my daughter, as hereinbefore stated, had been sold and the proceeds reinvested in a more desirable locality, according to the plan and understanding that he would do so before his marriage. The sale of these blocks was made in Sept., 1870, and the proceeds of such sale were applied in the purchase of lots 3, 4, 5, 6, 7, & 8, in block 24, Couch's addition to the city of Portland. The purchase was made jointly with Major John S. Walker. All along these years I was repeatedly consulted by defendant, Azor H. Nickerson, as to where the promised home should be bought, when the Portland lots, which were for sale, should reach a sum sufficient to do so, and I was requested to make a selection in San Francisco, for the home for my daughter, in pursuance with his agreement and promise to my daughter, his wife. After Major Walker's death Azor H. Nickerson, in telling me of the fact, said he regretted the Major's untimely death, and he
308 approved his wisdom in having bought real property for his family, saying, "It was the proper thing for army officers to do, for their lives were much exposed." I think this conversation was had when he was again at our house on leave from Arizona. It was in 1873, I think, he repeated that the agent in Portland thought that they would soon realize on the lots there, and he wished to have a home selected and ready for him to buy, adding, "I want to and must get that home for Em. and the children." Accordingly, and as he had before his marriage given me to understand I should do, I was asked to go with them in a carriage to look at several residences, both in Oakland and San Francisco, with a view of buying a home for Emma as soon as he would realize on the Portland lots. We spent over two days in that way.

— 10. To the tenth:

—. Captain Nickerson returned to Prescott, Arizona, early in the year 1874, I think, and it was while there this second time
309 that we exchanged a good many letters regarding the home he had promised to buy for my daughter with the avails of the original lots he gave her before marriage. We had now about decided this home should be located in San Francisco, and in pur-

suance of his promise to her and me before their marriage I was repeatedly commissioned to look up that house. I went to real estate offices time and time again and talked with my husband and many other persons about the most desirable houses or lots to buy and then took long walks to see them. I reported frequently to Capt. Nickerson by letter all I could learn & got his views in return. But time passed, the Portland property did not rise to a sufficient figure, nothing was done, & I destroyed the letters in disgust.

Int. 11. To the eleventh :

Ans. Yes, sir; I have seen him write very frequently and am well acquainted with his handwriting, and the letters hereto annexed are in his handwriting.

Int. 12. To the twelfth :

310 Ans. I have no letters of the defendant, Azor H. Nickerson, that he wished me to send to pl'ff.

Int. 13. To the thirteenth :

Ans. Yes, sir; my daughter, the complainant, visited her sister, in the city and county of San Francisco, and the defendant, Azor H. Nickerson, accompanied her, in the spring & summer of 1878. They stopped at Mrs. White's house.

Int. 14. To the fourteenth :

Ans. The defendant'-, Azor H. Nickerson's, conduct to his wife was exceedingly good, kind, and affectionate and attentive, and he was very anxious to have her comfortably settled for the summer.

Int. 15. To the fifteenth int'y she saith :

Ans. I was spending a portion of that summer at our vineyard, in Napa Valley. In June my daughters both came up to see me there & enjoy the country air. They came together with their children. Mrs. White returned to her home, in San Francisco, after about a month, while Emma & her little girl were up there

311 fully two months. During all this time complainant received kind, affectionate, and regular letters from def't that made her happy. She often walked up to the large gate, where the man placed the mail, on the days she expected to get her letters, so as to get them sooner. She answered them as regularly as they were received. After reading one of his letters one day, as we all sat on the porch, I asked her if she could not pass it around & so make the rest of us happy; she smiled & read aloud from Capt. Nickerson's letter to her as follows: "I am glad to say I have heard from the War Department & feel sure now of a speedy promotion & a new post. I shall soon come to San Francisco for you & Muggs, when I shall again be united to the sweetest of wives." In a few days after getting this letter my daughter left me and came again to her sister's house in San Francisco, where her husband, in the month of August of 1878, I think it was, came for her & his little daughter. He remained 2 or 3 days in the city, when they

312 all went together to the new post, which was Fort Vancouver, Washington Territory.

16th Int. To the 16th interrogatory she saith :

Ans. He did telegraph to me to that effect about the 20th of the month. I started immediately, for I was much alarmed. When I

reached Astoria another dispatch came to me from Capt. Nickerson, sent in thoughtful kindness, saying: "Emma was a little better; doctors hoped the crisis had passed." At Portland an army officer whom I did not know came up to me and asked if I was not Mrs. Kenny, and introduced himself as Maj. Babbitt, adding that his bro. officer, Maj. Nickerson, had requested him to meet me & take me to the river boat. I was very thankful to receive this care from Capt. Nickerson. Maj. Babbitt informed me that my daughter had typhoid fever & had been very ill, indeed. He also said she had the best of nursing and care, and that no music or firing of cannon was permitted on the parade grounds. After seeing me in the little
313 state-room on the river boat Maj. Babbitt took his leave. The boat did not start for some time, so it was about daylight before I got to Vancouver. An orderly met me & I was taken to the quarters of Maj. Nickerson in the army ambulance. He came out to open the door of the vehicle & to caution me to be very careful not to excite Emma, as she was very low. His reception was a kind & pleasant one. I noticed when we reached the parlor that he looked careworn & paler than usual. It was early Christmas morning, & toys & presents were everywhere to be seen. He told his little daughter that his grand-mamma was coming and it was another X-mas surprise. My first visit to my daughter's bedside was a very short one. She could only say My mamma in a low whisper. Major Nickerson was extremely watchful & tender to his wife during this sickness, and seemed very anxious she should get well. His conduct towards her at this time drew my heart out towards him as never before or since. When she no longer required night watchers
314 he had a cot placed in her room for himself & insisted on caring for her himself without help. As he was the adjutant general of the department and was in charge of headquarters during Gen'l Howard's temporary absence on an important Indian campaign, his duties were more arduous than they had ever been; still, after a very fatiguing day at his office, he would return home and devote himself to the night watching and care that the invalid required, and this he did for weeks; also in the day time he would often hurry up from his office to see that all was going well and to give the medicine to her himself. At one time I expressed my surprise & dislike that he should think this necessary when there were so many of us to do it. I asked him if he could not trust me or the nurse to give Emma those pills without his rushing up from the office at irregular times during the day to give them himself to her. "Well," he answered, "I suppose I am fussy & over-particular, but the fact is I can't afford to lose Em. now; I want her to go to
315 Washington with me. Em.'s a lady; she makes friends." Those were his exact words.

17th Int. To the 17th interrogatory she saith: Never but once, when he showed me a little blank book in which he kept the record of his gambling profits and los-es. "This is the only trouble Em. & I ever had," he said as he turned over the leaves; "it is the skeleton in our closet." I told him he had better be careful how he went on. He laughed lightly and left the room. This was during my long

visit to them at Omaha, Nebraska, in the winter of 1876 & spring of 1877.

18th Int. To the 18th interrogatory she saith: Befor-Maj. Nickerson went with his family to Washington, D. C., in the spring of 1879, it was often remarked by us all that he was both proud & fond of his wife. I have seen him caress her as she stood before her glass arranging her hair & toilet. He was fond of seeing her dressed in rich & handsome clothes. His love for his little girl Florence was
316 strong & tender; he never tired of making her happy, but after they had been in Europe a short time & he had been free to enjoy his long-coveted Washington society, his conduct was so unaccountable & surprising, & he was so different from what many of his acquaintances supposed him to be, that some of them thought him crazy. Gen'l and Mrs. Saxton came to see me before I went on to Washington in Aug., '83, when the Gen'l said it was "believed by many of the army officers that Nickerson was crazy." When his wife learned of his fraudulent divorce, his pretended marriage with Lena Diller Carter in less than three days after this divorce was obtained, and all the doings and circumstances attending his actions, she for awhile thought his reason was dethroned, he had so utterly destroyed himself. Maj. Nickerson wrote me from Washington Aug. 2d, 1881, a letter which is at present in the hands of Judge Johnson, one of the atty's for complainant, in which it is very evident he intended to keep his wife abroad an indefi-
317 nite length of time. "I prefer," he says, "that they remain in Germany two years before going to a French-speaking nation," &c.

April 11th, 1880, is the date of a long letter from my daughter to me, giving 3 good reasons why she decided to go abroad. This was 3 months before she went. The 1st reason was to economize, that her husband might the more easily pay for property; 2nd, her own health was poor; & 3rd, to begin the little girl's education in the languages. Just before sailing she again wrote me, under date of July 1st, 1880 (Exhibit —), in these words: "We have given up being able to sell any Portland property at present, or just at present, so I have concluded to go with Florence to Germany. My husband & I are willing to endure the separation for awhile because it seems best." This was about a week before her going away.

To prove that, after about a year and a half spent in Europe, her prolonged stay was nothing but a bitter banishment. I have two letters to be annexed to this deposition, and, as above, they
318 are in the hands of complainant's att'ys. The 1st is one Maj. Nickerson received from her & by her request forwarded to me; it is dated Dresden, Oct. 9th, 1881, addressed my dear husband. She says in it: "Did you scold a little because I was so homesick at Norderney or because I wanted to go back to you if you went to a frontier post?" And in another place—something having been said about Maj. Nickerson's going to Europe to join them—she says "she does not care to go to France or Italy without him." The 2d letter under this head is written 14 months afterwards & is

a long & sad account of her trials during that time. She desires to return to her native land & her husband, but he does not send her sufficient means. He says nothing about her coming back; nothing about himself or his plans. His letters to her are cold, short, & indifferent. She begs him to tell her what is rising up between them. The paying for property on the installment plan was long since given up. Her health then was much improved, & she thinks the
319 child's education could now be better continued at home. This letter is dated Paris, Jan'y 28, 1883. Small remittances came regularly, but nothing to return with; letters short & very unsatisfactory. I again quote from her letter to me: "I have asked Seldon again & again if I had and how I had offended him. I have told him how sorry I was to have hurt him in any way if I had done so. I have begged his pardon if I have unintentionally offended him over & over again. I have done everything I could. There is nothing more to be done on paper. What do you think is the matter with my husband & why does he treat me so? Do you think it right for me to remain away from my husband any longer? He may be ill; he may grow worse," &c., &c. Maj. Nickerson finally ceases altogether to address letters to his wife of any description. The short ones, containing the money checks, are addressed to the child. My daughter at last resolved to return without his sanction or invitation & to obtain funds therefor required on appeal to friends. "But if I should
320 take this step," she says, "if I should return home & he should not be glad to see me, what should I do then; where should I go? Can he care for me longer & yet break my heart in this way?"

Defendant very often complained of having no money; no ability to obtain it; of being financially embarrassed, both before & after his wife went abroad. This he does in a letter to me written more than a year after she went away and referred to above, and he says: "My embarrassment & my troubles are my own."

In answer to the cross-interrogatories propounded to witness, Celia D. Kenny, she saith:

1st X. To the 1st cross-interrogatory she saith:

Ans. Such conversations took place at Portland, Oregon, in the summer of 1870 while taking a ride with the def't. I then had a long conversation with him. Again, at our house on Russian hill,
321 in San Francisco, in 1871, and after that, in 1873, at our house in this city, and when his family were spending the winter with me; also the year following, I think, when I went with both the complainant & defendant to Oakland, California, to look up a house & lot suitable to buy for my daughter's promised home, when a sufficient amount therefor should be realized on the Portland, Oregon, property, which Maj. Nickerson said his agent whom he had left behind would soon dispose of.

2d X. To the 2nd cross-interrogatory she saith:

Ans. I have stated our conversation in the exact words as nearly as I can remember.

3rd X. To the third cross-interrogatory she saith:
Ans. I have already answered the question fully.
4th X. To the 4th cross-interrogatory she saith:
Ans. I have also fully answered that question.
5th X. To the 5th cross-interrogatory she saith:
322 Ans. I have another daughter, Ida M. Derby Broderick, who is married to Lt. P. T. Broderick. He is 1st lieut., and that was his rank when Ida married him. He is adjutant of his regiment, and was adjutant of his regiment when they were married. His regiment is the 23rd Infantry. It is true I did object to the complainant engaging herself to & marrying Maj. Nickerson because he was an army officer. I had reasons at that time for objecting to army officers in general, which do not require to be mentioned here & are not relevant to this case, but as the weeks passed on & I could not pursuade complainant to give up Capt. Nickerson my husband, knowing my anxiety, held correspondence with others in Oregon, by which means I learned some things much to be regretted about the character & habits of defendant. I at once resolved that if I could not by going up to Portland break up the engagement I would require a settlement of real property upon my daughter, if he possessed any such, before I would or could
323 approve or sanction their union. The knowledge of defendant's real character & habits thus acquired I thought best not to impart to the complainant. I saw they were much attached to each other, and I believed that if they were really to be married it was better she should be ignorant of some things & put trust in him.
6th X. To the 6th cross-interrogatory she saith:
Ans. That is in part answered above. I don't know what his salary is or was.
7th X. To the 7th cross-interrogatory she saith:
Ans. Yes.
8th. To the eighth cross-interrogatory she saith:
Ans. There was not at any time. I did not think of asking it. Lieut. Broderick's face & manner inspired my confidence, and, besides, he always bore a good name. He will always do his duty, I feel assured.
9th X. To the 9th cross-interrogatory she saith:
Ans. He was capt. before and when they married; I do not
324 know what his salary was or what it had been.
10th X. To the 10th cross-interrogatory she saith:
Ans. She was, and the reasons are stated above.
11th X. To the 11th cross-interrogatory she saith:
Ans. It most certainly was, but in the case of complainant the circumstances were very different; the two men immensely & immeasurably so.
12th X. To the 12th cross-interrogatory she saith:
Ans. Yes; she is 37 years of age.
13th X. To the 13th cross-interrogatory she saith:
Ans. Yes; that is right.

14th X. To the 14th cross-interrogatory she saith :

Ans. The marriage settlement—that is, the property relating thereto—originally consisted of two blocks of city lots in the city of Portland, Oregon, in Couch's addition, numbering 145 & 146, which two blocks, according to understanding & plan made between defendant & myself, were sold on Sept. 17th & 19th in order that the
325 proceeds might be better reinvested for a rise in market values. The proceeds of that reinvestment were to be sacredly devoted to the purchase of a home for complainant and for her children, should any such be born. In Oct. and Nov. of the same year the reinvestment was made in connection with Major Jno. S. Walker, consisting of several lots, numbered 3, 4, 5, 6, 7, & 8, in block 24, in Couch's addition to said city of Portland, Oregon. The sale of the blocks 145 & 146 was on the 17th & 19th of Sept., as stated, of the year 1870, & the money was reinvested in said lots 3 to 8 inclusive, block 24, in Oct'r & November of the same year, 1870. Afterwards a division of that property was made between the defendant & the heirs of the said Jno. S. Walker, & lots 7 and 8 and the north half of lot six were, on the 20th of June & the 30th of October of 1878, allotted to the said defendant, Azor H. Nickerson. This information I obtained from the records of the city of Portland.

In the spring of 1879, when I was returning from Fort Van-
326 couver to my home in San Francisco, having my little granddaughter, child of complainant and defendant, in charge, the defendant, Azor H. Nickerson, came with us from Fort Vancouver to the ocean steamer and placed us on board. We, after leaving the river boat, went to a hotel recently built near the water and had our supper. On our way from the hotel to the ocean steamer defendant pointed to our right and said, "Those lots are right over there." I looked in the direction indicated, and he added, "They don't look like much but a big hole in the ground; still they are in a good and business part of the city, being near the water front, and I don't see why in thunder they don't go up, but they are sure to do so eventually."

X Int. 15. To the fifteenth :

Ans. I have answered all of the questions to the best of my own knowledge.

MRS. CELIA D. KENNY.

Subscribed and sworn to before me this 5th day of May, 1885.

L. S. B. SAWYER,
Com'r, &c.

327 *Interrogatories Propounded to Witness, Emma C. Derby Nickerson.*

Int. 1. In answer to the first interrogatory witness saith :

Ans. Emma C. Derby Nickerson ; 37 years of age ; reside at present at San Francisco, California.

Int. 2. To the second :

Ans. I am.

Int. 3. To the third:
Ans. I am; August 13th, 1870; at San Francisco, California.
Int. 4. To the fourth:
Ans. At San Francisco, California.
Int. 5. To the fifth:
Ans. He was dead; George H. Derby.
Int. 6. To the sixth:
Ans. About two years.
Int. 7. To the seventh:
Ans. I was on a visit to my aunt's, at Portland, Oregon,
328 where I met the defendant, Azor H. Nickerson. I resided in San Francisco previous to & at the time of my marriage.
Int. 8. To the eighth:
Ans. They were. My mother in no manner encouraged my marriage with the defendant, Azor H. Nickerson; on the contrary, at first she said she did not approve of it.
Int. 9. To the ninth:
Ans. Yes, sir; but at first more as a matter of correspondence. My mother was at San Francisco and I was on a visit to my aunt's at Portland, Oregon. My mother wrote to both my aunt and myself on the subject. She wrote to my aunt not to allow the affair to proceed further if possible. She wrote to me objecting strongly to my making any marriage engagement with the defendant, Azor H. Nickerson; and when I asked her to give me her reasons she answered that she did not wish me to marry an army officer; that they, as a class, led a wandering life and generally had no home for their families and only depended on their pay to live upon, and
329 that when I settled in life she wished it to be near her in San Francisco.
Int. 10. To the tenth:
Ans. Yes, sir; the defendant, Azor H. Nickerson, owned two certain blocks of real estate in Portland, Oregon, in Couch's addition to the city of Portland.
Int. 11. To the eleventh:
Ans. Yes, sir; he did. He promised to give me the two blocks of land referred to in my last answer after we were married, for the purpose of providing me with a home of my own.
Int. 12. To the twelfth:
Ans. Yes, sir; before our marriage, while walking out together, we went many times to where this property is situated, and the defendant, Azor H. Nickerson, pointed out the property belonging to him, situated in Couch's addition to the city of Portland, Oregon, consisting of all of blocks Nos. 145 and 146. This was in May and June, 1870.
Int. 13. To the thirteenth:
330 Ans. Yes, sir; the defendant, Azor H. Nickerson, promised and agreed every time we spoke of the property after our engagement that it should be mine after our marriage, in consideration therefor as a marriage settlement and gift; that he would convey it to me for a home for me and mine. He stated also that, although the property was unimproved at that time, it was situated

in a part of the town which would soon be in demand for private residences; he would keep it until he could sell a block for a sufficient sum to enable him to put up a house on the remaining block, and if the blocks did not increase rapidly in value he thought it might be better to sell the whole as soon as he could get a purchaser to advance on the price he gave for it and then reinvest the proceeds of such sale in the purchase of other property down near the river front, in which direction he thought the business part of the town was going. When this last investment should advance in value sufficient to enable him to sell with advantage, so as to enable
331 him to buy me a home, he would then sell and give me my home, or if it did not advance sufficiently in value he would sell again and reinvest as opportunity offered and sell until the proceeds would be sufficient to invest in the purchase of a home for me and mine, and which would then be my home and property as a gift from him and as a marriage settlement.

Int. 14. To the fourteenth:

Ans. I have fully answered this question in my last answer. The defendant, Azor H. Nickerson, after we were engaged to be married, time and time again referred to my having my own home, and always agreed to convey all of said blocks or the proceeds of the sale of said blocks to me, and which should be invested for my benefit in procuring a home for me and mine after we were married as a gift and marriage settlement.

Int. 15. To the 15th:

Ans. My mother, as I have already stated, after learning of my engagement, objected strongly to my marriage with the de-
331½ fendant, Azor H. Nickerson, and still continued to so object after considerable correspondence upon this subject between my mother and my aunt in Portland, as well as with myself, and not having succeeded in her object in breaking off the engagement decided upon going to Portland, Oregon, herself, and by her personal presence endeavor to do what she could not by correspondence. Soon after her arrival at Portland, which I think was in the morning, the defendant, Azor H. Nickerson, called and made arrangements to take my mother out to drive in the evening. On the return of my mother from the drive she told me that she had had a very long conversation with the defendant, Azor H. Nickerson, and professed herself very well pleased with the interview. She then asked me if I had seen the two blocks of land owned by the said defendant, Azor H. Nickerson. I answered that I had, and that they were to be mine after my marriage with the defendant, Azor H. Nickerson; that he had promised and agreed to give them to me for my home. The defendant,
332 Azor H. Nickerson, told me that same evening that he had had a "lovely talk" with my mother and that it was "all arranged." My mother told me afterwards that he, the defendant, Azor H. Nickerson, had inquired of her as to what her objections were, and she had stated them to him, and he then assured her that he would, after the marriage, provide me with a home of my own, and spoke of the blocks of land he owned in Couch's addition and his purpose of giving them to me for a home. She further added

that the defendant, Azor H. Nickerson, had stated to her that I knew "all about it, for he had told me so," and that the agreement had already been made between us. He also told my mother that if she so desired it that he, defendant, Azor H. Nickerson, would deed the property to me for my home or that he would sell it and with the proceeds of such sale purchase for me a suitable home, and that my mother herself should choose where it should be located. He,
333 the defendant, Azor H. Nickerson, also said to my mother that should said blocks of land not sell for a sufficient sum to enable him to buy me a home he would invest the proceeds of such sale in other property and keep investing until he realized the desired amount to fulfill his promise and agreement with me. After making these statements to and assuring my mother that after our marriage he would give me these blocks for my home, my mother felt satisfied and convinced that he would keep his agreement and promise and consented to our marriage.

16. To the sixteenth: I have already stated that it was distinctly understood and agreed upon between us, the defendant and myself, that after our marriage the blocks or one of them should be sold and the moneys received from such sale should be appropriated to the building of a home for me on the other block; that should such sale or proceeds be insufficient for that purpose the two blocks should be sold and the sum obtained
334 should be invested, as he said, in other real estate near the river, where property would advance more rapidly in value, and so on making investments from time to time with the proceeds of said blocks and other sales which might be made, and these proceeds should be held by him, defendant, Azor H. Nickerson, sacredly in trust for the purpose of purchasing a home for me in my own right, after and in consideration of our marriage. In pursuance of this agreement and promise, made between the said defendant, Azor H. Nickerson, and myself, as well as with my mother, the two blocks of ground, Nos. 145 & 146, were sold shortly after our marriage, namely, on the 17th and 19th days of September, 1870, and in the months of October and November, 1870, the money which they brought was invested jointly with a friend, Major John S. Walker, in the purchase of lots 3, 4, 5, 6, 7, & 8, in block 24, in Couch's addition. After this a partition was made between the defendant, Azor H. Nickerson, and the heirs of said Walker,
335 and lots 7 and 8 and the north half of lot 6, in said block 24, were, on the 20th June and the 30th October, 1878, allotted to the said Azor H. Nickerson. This piece of property was situated on the river front, where property had a tendency of increasing in value more rapidly than blocks 145 & 146, which property he said he would sell when he could realize a sum sufficient to enable him to provide me with my own home. He said constantly and always that I might look forward to said property as some support and a home for myself and mine in case anything should happen to him. In proof of the intention of the said defendant, Azor H. Nickerson,

in this regard as to said real estate as well as all other property, "real, personal, of any kind whatsoever of which he should die possessed," I have his will, dated Omaha, Nebraska, May 14, 1876.

Int. 17. To the seventeenth:

Ans. At the time of our marriage the defendant, Azor H. Nickerson, was stationed at Portland, Oregon; we were married at
336 San Francisco; afterwards we returned to Portland; from thence we went to Drum barracks on our way to Prescott Arizona Territory.

Int. 18. To the eighteenth:

Ans. I think we left Portland, Oregon, early in June, 1871, for the headquarters of the department of Arizona, which were at that time Drum barracks, and remained there three or four months.

Int. 19. To the nineteenth:

Ans. In March, 1879, in the Adjutant General's Office U. S. A., War Dept., as Asst. Adj. Gen'l U. S. A.

Int. 20. To the twentieth:

Ans. Yes, sir. He was more than ordinarily affectionate, although at times his quick and irritable disposition would assert itself. He taught me to believe that he meant nothing by it and that I must not mind him.

Int. 21. To the twenty-first:

Ans. It was with his full consent and desire. He did everything that a husband could do to make the voyage pleas-
337 ant and comfortable for myself, his wife, and daughter. He made all the arrangements himself. At various times during our married life I thought it imperative on me as a wife to get my husband, the defendant, Azor H. Nickerson, away from the habits and associations he almost invariably fell into at every move of station, and when I would talk of our plans, that we should go abroad for a year, he would acquiesce in my idea, and say when he could raise the money he would go, or he would laugh and say, "I suppose the only way that I shall ever get to Europe will be for you to go first, then I should be obliged to go over for you, as I would not be able to keep away from you very long." After residing in Washington for over a year, and finding that the heat of the summers and the dissipation of the winters were not conducive to the return of my health and strength, my husband, the defendant, Azor H. Nickerson, any myself became convinced that a change for my health
338 was necessary, and we thought that a trip to Germany would be beneficial to me, on account of the waters, and an advantage to our daughter, who would have the opportunity of acquiring the German language; also because I wished to curtail our expenses and economize in my living expenses, to enable my husband to make payments on the house he had purchased in Washington. I and my daughter sailed for Europe on the 10 July, 1880.

Int. 22. To the twenty-second:

Ans. Yes, sir; he did; he went with us to New York, and we stopped at the St. Denis Hotel at New York overnight; he had already purchased the tickets himself at Washington, through the agency of the North German Lloyd Steamship Co.; he accompanied

us on board the steamer and bade us an affectionate good-bye and kissed us many times.

Int. 23. To the twenty-third:

339 Ans. After bidding us good-bye and kissing us he left us, and a few minutes afterwards he returned with a bouquet of flowers, which he threw to us, and kissed his hands to us and then went away.

Int. 24. To the twenty-fourth:

Ans. Yes, sir; he did; after we were on board the steamer the defendant, Azor H. Nickerson, left my little girl and myself and went among the passengers and returned in company with a gentleman who he introduced to me as a Mr. Slater who was going to Leipsic on business, and who would take good care of me and my daughter.

Int. 25. To the twenty-fifth:

Ans. He did; about every month he made the remittances, and wrote at first more frequently than that; his last letter was dated May 31, 1882.

Int. 26. To the twenty-sixth:

340 Ans. He did; he wrote to my little girl about once a month, and every time, I think, he enclosed a draft to my order to defray our expenses.

Int. 27. To the twenty-seventh:

Ans. Yes, sir; when I found that he only wrote to our daughter I wrote to him repeatedly for an explanation and my letters remained unanswered.

Int. 28. To the twenty-eighth:

Ans. They are.

Int. 29. To the twenty-ninth:

Ans. While at Dresden, on the 31st October, 1881, the defendant, Azor H. Nickerson, wrote to me that on account of pecuniary embarrassments he had been obliged to sell the house 1457 Rhode Island avenue, Washington, D. C., and requested me to execute and acknowledge before the U. S. consul the enclosed deed and return it to him immediately. Altho' very much hurt that he had given up this place, with no explanation, I complied with his request, executed, and returned the deed to him. On Nov. 7th, 1881, he

341 wrote me that Mr. Gillette, agent for the Portland property, had sold the lot and a half of my Portland real estate for $7,000, and on the ninth, same month, sent deed for me to execute, which I did. On the 18th November he wrote again, enclosing another deed to said lots in Portland, in Couch's addition, requesting me to sign and acknowledge same and return it to him. This second deed was for the last lot, which brought $5,000. At this time I wrote to him imploring him to be very careful of the money the property had been sold for, and think, if perchance, for some unexplained reason, he might not be ready to buy me the long-promised home for me & mine, I begged him to put the proceeds in U. S. bonds as the safest place for the money.

Int. 30. To the thirtieth:

—. There is no truth nor foundation for any such statement; it is utterly false; there never was such separation, and I know of no

cause or reason why such a charge should be made. It could not be truthfully made.

342 Int. 31. To the thirty-first:

Ans. It is in the handwriting of the def't, Azor H. Nickerson.

Int. 32. To the thirty-second:

Ans. It is in my handwriting, addressed to my mother; the three lines following the postscript and initials A. H. N. are in the handwriting of the def't, Azor H. Nickerson.

Int. 33. To the thirty-third:

Ans. Exhibit 8 was written by me to my mother, and I mailed it myself. It came back to my possession thro' my brother-in-law; Lt. P. T. Broderick, U. S. A., to whom my mother had sent it. After my return from Europe Lt. Broderick brought it to me. My mother, having learned from Lt. Broderick the treachery of my husband to me, *my mother*, in sore distress and greatly annoyed thereat, sent to Lt. Broderick this letter, together with others written by me & the defendant to my mother.

Int. 34. To the thirty-fourth:

Ans. They are in the handwriting of def't, Azor. H. Nickerson.

343 Int. 35. To the thirty-fifth:

Ans. Yes, sir; all of them.

Int. 36. To the thirty-sixth:

Ans. I am; she and her sister, at the invitation of Azor H. Nickerson, the defendant, called on me in the summer of 1879, while I was residing at Washington. The defendant, Azor H. Nickerson, had informed me previously to their call that they would do so; that they were friends who he had met out in the far West and had come to reside in Washington.

Int. 37. To the thirty-seventh:

Ans. At their first visit the defendant, Azor H. Nickerson, introduced them to me. After the first visit they came frequently together. The defendant, Azor H. Nickerson, would bring Lena D. Carter unexpectedly to dinner. At one time he invited her to spend several days with us, and she came with her sister. On one occasion when we had invited her, together with other friends, to dinner, as was arranged by Azor H. Nickerson, the defendant, the

344 defendant', Azor H. Nickerson's, conduct was so marked I thought he was rather too attentive and inti * * *

(NOTE.—Balance of this & the answer to 38 interrogatory are missing from the original deposition.)

Int. 39. To the thirty-ninth: I have, I believe, answered fully all the questions, and the only addition I can make is to repeat that before my marriage with defendant, Azor H. Nickerson, he promised both myself and my mother that after our marriage he would convey to me blocks 145 & 146, so that I would have a home for me and mine, and that in the event of the sale of these lots and the amount realized therefrom being insufficient it would be reinvested for my benefit and advantage and to continue such investments

until I had my home; also that my mother never would have consented to our marriage unless she had been convinced that these lots would be conveyed to me and defendant would provide the home he agreed and promised for me and mine.

I also state that the money or the greater part thereof—viz.,
345 $8,380—was, after the sale of lots 3, 4, 5, 6, 7 & 8, in b'k 24, invested in the purchase of the house on Dupont Circle, Washinton city, D. C., and that that money belonged to me as the proceeds originally derived and obtained from the sale of blocks 145 & 146; but that, instead of causing them to be conveyed to me as my just right, in pursuance of the antinuptial agreement made between myself and the defendant, Azor H. Nickerson, as well as with my mother and the said defendant, he, said defendant, did cause said house and lot, No. 7 Dupont Circle, to be conveyed to the defendant, Lena D. Carter, on the 31st May, 1883, and said house and lot are in her possession to-day.

Cross-interrogatories:

X Int. 1. To the first cross-interrogatory she saith:

Ans. My mother has always informed me that I was born on the 24th July, 1847, and I have always been under that impression. I therefore answer that I was born on the 24th July, 1847.

X Int. 2. To the second:

Ans. At Dallas City, Oregon, on the 21st April, 1870, I think.

346 X Int. 3. To the third:

Ans. Yes, sir.

X Int. 4. To the fourth:

Ans. I was visiting with my aunt at Portland, Oregon, and a party was got up by the officers and their wives to proceed to Port Lapwai, Idaho; General Crook's wife invited me to accompany her and I did so. The defendant, Azor H. Nickerson, formed one of the company. On our way to the Dalles, on the boat, he paid me particular attention, and on our arrival at the Dalles he proposed marriage to me and I accepted him. I do not know the distance from Portland. I do not know of any publicity or announcement of our engagement at that time, but presume that our friends knew it or so understood it.

X Int. 5. To the fifth:

Ans. Yes, sir; I did, as an engagement ring.

X Int. 6. To the sixth:

Ans. At the time of our marriage the defendant, Azor H. Nickerson, was the owner of blocks 145 and 146 in Couch's addi-
347 tion to the city of Portland, Oregon; they were unimproved.

X Int. 7. To the seventh:

Ans. Yes; both blocks were sold during the month of September, 1870. I do not know to whom or the price; I know that the proceeds of such sale were reinvested jointly with Major John S. Walker in the purchase of lots 3, 4, 5, 6, 7, & 8, in block 24, Couch's addition to — city of Portland, Oregon, in October and November, 1870. I do not know the amount that was invested.

X Int. 8. To the eighth:

Ans. Said blocks were in the surburbs of the town and within walking distance of the centre of the town, and not a great distance from some of the residences. I do not remember that Couch's Lake or swamps was very near them, but do not think they were on low ground.

X Int. 9. To the ninth:

Ans. I do not know what is meant by a building lot.

348 X Int. 10. To the tenth:

Ans. Thes- blocks were unimproved and covered with stumps, and not suitable at that time to build on; but the defendant stated to me repeatedly that the time was not far distant before these blocks would become valuable, and that he would then sell one, and with the proceeds build me a home on the other.

X Int. 11. To the eleventh:

Ans. Yes. He told me that he thought it would not be advisable to build on them, as he would not like to live in that part of the town, and besides there was not sufficient frontage for such a residence as he would like to build. The lots ran from street to street, fronting each lot on a different street. I do not remember when, to whom, or for how much they were sold.

X Int. 12. To the twelfth:

Ans. I believe he did; but when he spoke of building thereon he said that it was too far away from the town and too inaccessible, whereas blocks 145 and 146 were preferable for that purpose.

349 X Int. 13. To the thirteenth:

Ans. Yes, sir.

X Int. 14. To the fourteenth:

Ans. Soon after our marriage defendant, Azor H. Nickerson, purchased, jointly with Major John L. Walker, lots 3, 4, 5, 6, 7, 8, in block 24. These lots were situated near the river front, in a part of the town where it was believed would be selected for the building of warehouses. These lots were paid for from the proceeds of the sale of block 145 and 146. I do not know the prices obtained or paid out.

X Int. 15. To the fifteenth:

Ans. The blocks 145 & 146 were sold shortly after our marriage. This I know of my own knowledge, for I signed the deeds therefor; do not remember who the purchasers were or the price paid. The defendant, Azor H. Nickerson, told me that the proceeds of said sale were paid jointly with Major Walker in the purchase of lots 3, 4, 5, 6, 7, & 8, in block 24, during the two following months. The last-named lots were sold while I was with my daughter in Europe.

350 The deeds were sent to me to be signed. The consideration named in said deeds was $7,000 & $5,000. I do not remember to whom they were sold.

X Int. 16. To the sixteenth:

Ans. I do not remember.

X Int. 17. To the seventeenth:

Ans. I do not remember; it may be so.

X Int. 18. To the eighteenth:

Ans. The property was in the market for sale about that time, as it was most of the time before & since; if it was actually sold I have forgotten it.

X Int. 19. To the nineteenth:

Ans. If so, I do not remember the fact.

X Int. 20. To the twentieth:

Ans. I have no recollection of it.

X Int. 21. To the twenty-first:

—. I do not know.

X Int. 22. To the twenty-second:

351 Ans. About that time we were anxious to sell these lots and put them in the market for sale and when sold to reinvest the proceeds, and so carry out the original agreement as to blocks 145 & 146—that is, to sell at a profit and reinvest until the amount should be sufficient to enable him to buy me a home for me and mine. As to the cattle transaction, we wished to make that reinvestment if we could sell the lots. I do not remember that the defendant actually subscribed anything on it.

X Int. 23. To the twenty-third:

Ans. Near the river.

X Int. 24. To the twenty-fourth:

Ans. I believe so; in fact, I know they were.

X Int. 25. To the twenty-fifth:

Ans. I do not think they were inaccessible; there were no dwelling houses there, beeause it was a place for warehouses and not dwellings, and the situation was always considered as a place that would eventually become valuable for such buildings, it being near the river.

352 X Int. 26. To the twenty-sixth:

Ans. Yes; he did; for in doing so the property increased in value; besides, he had to do what his neighbors did or had to do.

X Int. 27. To the twenty-seventh:

Ans. The two blocks were sold; to whom I do not know nor what the price received was; it was in Sept., 1870.

X Int. 28. To the twenty-eighth:

Ans. As I have before stated, the blocks 145 and 146 were sold; to whom and for what price I do not know; but this I know, that defendant, Azor H. Nickerson, repeatedly informed me that he, in conjunction with Major Walker, had reinvested the proceeds in the purchase of lots 3, 4, 5, 6, 7, and 8, in block 24, and he did so to carry out his promise and agreement with me and my mother to buy me a home of my own whenever he could sell same for a sufficient sum to do so.

X Int. 29. To the twenty-ninth:

353 Ans. As I have before stated, that I was in Europe at the time these lots were sold and I do not remember who the purchasers were. The consideration named in the deeds sent to me for signing was $7,000 and $5,000.

X Int. 30. To the thirtieth:

Ans. When I returned the deeds after executing them the consideration of part of them, say, $8,380, was invested in a house, No. 7

Dupont Circle, city of Washington, in June, 1882. This house was purchased by defendant, Azor H. Nickerson, through one William B. Matthews, to whom he had the title conveyed upon certain trusts. It was bought of Thomas Sheridan.

This lot of ground and improvements thereon in which the defendant, Azor H. Nickerson, invested $8,380 of the $12,000 received for the Portland property is a part of lot 2, in square No. 114, in the said city of Washington, D. C.

The defendant, Azor H. Nickerson, upon learning of my return from Europe, in the spring of 1883, and that I had instituted proceedings in Philadelphia, Penn., to annul the decree of di-
354 vorce said defendant had fraudulently obtained against me, and seeing that I was about to succeed therein, on the 31st of May, 1883, with the intention of defrauding me of my first rights in said real estate No. 7 Dupont Circle, caused said real — to be conveyed to the defendant, Lena D. Carter, whom he had married two days after he had fraudulently obtained the said divorce.

The defendant, Azor H. Nickerson, directed William B. Matthews to convey all of this property, which consists of lot 2, square 114, to said defendant, Lena D. Carter, and she is in possession thereof to-day.

X Int. 31. To the thirty-first:

Ans. I have already answered this question in my last answer.

X Int. 32. To the thirty-second:

Ans. I was not.

X Int. 33. To the thirty-third:

Ans. I have answered all the questions to the best of my personal knowledge.

X Int. 34. To the thirty-fourth:

—. I think I have answered all of them.

EMMA C. DERBY NICKERSON.

Subscribed and sworn to before me this 5th day of May, 1885.

L. S. B. SAWYER, *Com'r, &c.*

355 Which said testimony was reduced into writing by George T. Knox, a disinterested person, and read over and signed by said witnesses in my presence, and is here annexed to the writ of commission, closed up under my seal, and returned into said court.

Witness my hand and seal this fifth day of May, A. D. 1885.

L. S. B. SAWYER, [SEAL.]
Com'r, &c.

EXHIBIT E. C. D. N. No. 8.

* * * My husband and I are willing to endure the separation for a while, because on some accounts it seems not only best, but almost necessary.

I wish I could hear from you, after you receive this, before I sail, but I fear there is scarcely time, as we will probably leave here for New York the 8th or 9th. If you will please write right away I

may possibly get the letter, though. I want a good-bye, a "God speed you" from my dear mother. My address for the present in Germany will be the same as Aunt Lissie's, care Mrs. T. B.
356 Trevett, Belvedere alleé 12, Wiemar, Germany. If I stay over there for two summers and the intervening winter I think I will then be ready to come home, if not before. With a great deal of love from us all, your loving daughter,

EMMA D. NICKERSON.

P. S.—I do not yet know your new address and will send this to Floy's house. With love,

EMMA.

Had to change st'r & they go a week earlier—July 10th inst.

A. H. N.

Postscript only and not letter in Major Nickerson's handwriting.

H. R. H.

EXHIBIT E. C. D. N. No. 10.

WASHINGTON, *July* 24, 1880.

MY DARLING WIFE: I am very much in hopes that this your birthday will find you and our dear little daughter safe and well on solid earth. I am told that the arrival of the st'r appears in the N. Y. Herald, and shall read that column carefully till I see that item. I am going to Oakland to-night, to remain till to-morrow ev'g. Bounke has asked that his W. P. detail be revoked. I
357 called upon Mrs. Roy last eve'g; had a pleasant call; have not sent you any papers yet, but will do so Monday. I am reading a good deal of "trash" now as a recreation from my board and other duties. Gen'l McDowell was relieved and Gen'l Augur detailed in his place on the board. I understand it has been decided to send Benjamin to Arizona this fall, but I never place much dependence on the future contingencies. Mrs. Hanford is going to Ohio, as her mother can't come to her & she wishes to be with her "soon." I don't know who will go into the house, but presume the owner may. It is a long time before I can hear from you, my sweet wife, and I miss your gentle, loving presence very much. I am very certain that you will derive great benefit from your trip, and that is some consolation. Tell Muggs that her papa loves her very much, and she must learn German very fast, so that she can come back and bring her mam-a. The appearances are that my summer vacation is to be limited, if not confined entirely to what I
358 have already had, but I hope not. Accept my love, my dear wife, on this your thirty-third birthday, and, as I wrote the other day, a number of kisses equal to the no. of years.

Aff'ly, SELDEN.

EXHIBIT E. C. D. N. No. 11.

WASHINGTON, *July* 29, '80.

MY DARLING WIFE: I have been very much trouble- about your steamer, as I only found out yesterday that she had reached Southhampton the 21st, and even now I don't know positively if she has reached Bremen. I am very busy and work many hours a day. Gen'l Breck said to-day he would see Drum and have me relieved if I said so, but I told him that I prefer to carry it through. He, my neighbors, and all seem very solicitous for my welfare, and do all they can for me. I have not had a real sick time yet, but for several days past have had a terrible pressure on the head. I hope to hear from you soon from Southhampton. John's little baby is very sick; don't think it will live. Gen'l C. wrote me
359 to meet him at Canton, where there is to be, Sept. 1st, a reunion of a number of Ohio reg't-; Major & Mrs. McKinley live there, & I may go for reasons that you know. I miss you, my lovely wife and little daughter, very much, but I am going to get a calendar one of these days and commence to check off days, weeks, and months till you come back to me again. You can see that I am tired or I should not send you such a looking letter, but I must send one and am too tired to write a better. Give my love to all our friends. Learn as much as you can & write me as often as you can. Tell Muggs to kiss you for me, & I know you will return it for me.

Yours aff'ly, SELDEN.

EXHIBIT E. C. D. N. No. 14.

WASHINGTON, *Aug. 24th*, '80

MY DEAR EM.: I am unable to account for not hearing from you for so long, my last letter bearing date of July 27th, almost a month ago. I am trying not to think about it, and when
360 I do think of it I console myself with the thought that you probably went away as you thought of doing and have had no opportunity. Of course, I know if anything serious had happened I should get a cable dispatch, but I am worried, nevertheless. We are now having the hottest & most continuously hot weather we have had this summer. We are parboiling. Gen. Myer (old Prob.) died at Buffalo to-day—softening of the brain. Gen'l Upton & I called on the President & Mrs. Hayes at the Soldier's Home last ev'g. Had an agreeable call. Mrs. H. enquired for you. I am afraid I am not going to get away to Ohio Sept. 1st, when Gen'l C. wants me to, on account of the board. Col. & Mrs. Benjamin, on whom we also called last ev'g, are breaking up preparatory to going to Arizona. I am sometimes almost sorry I am not going elsewhere, because then I should have an excuse to bring you and Muggs home. Indeed, all that saves me from being terribly homesick is that I am

too busy and get too tired to think of it. Notwithstanding
361 this, I am very lonely; when lying awake I realize that you are not in the next room & are so very far away. I must not write this, for it will only make you, my sweet wife, lonely and homesick, too. I trust you have gotten quite rested and will improve in health. Remember that I am more anxious about that than that you learn so much. Rest, my dear wife, and come home strong. Take good care of yourself, so that when you come back to me you will never need to go away again.

25th Aug.—Still no letter from you; I wonder why? Our hot weather continues, the hottest we have had. I called at Judge Williams' last night after having driven to the Smithsonian with Gen'l Poe first & to the Home with Dolley & Edna Patterson afterwards. The latter was so nice. She listened to Dolley's telling of a gentleman whom she, D., thought "so jolly and nice," & then said, "And I think Major Nickerson is." They told me that Lucy had received a letter from Florence, but did not remember the date; presumed to be about the same date as my last. I am afraid
362 that you are tired out and ill, but I am not going to think so, if I can help it. I have just reread your letter. When you speak of going "next week" to a country place I presume you went and that you have had no opportunity to write.

26th Aug.—Your letters of the 6th, with Florence'- of the 7th, came this a. m. I am so glad to hear from you again, but sorry you do not get stronger. I am very glad that you have gone to the baths mentioned. I know you will do right, *i. e.*, for the best, my darling wife, and with much love I remain —. I shall send a draft to you either to-day or to-morrow for 800 or 1,000 m. I am cutting close in order to get past my Nov. 1st payment. With a world of love for yourself and our dear little daughter. You must not allow Aunt L. to "entertain you," but must pay your own way. Tell Aunt L. that it is a business transaction that unsettled would give me great discomfort.

Aff'ly, SELDEN.

363 EXHIBIT E. C. D. N. No. 15.

WASHINGTON, U. S. A., *Sept. 9th*, 1880.

MY DARLING WIFE: I don't know whether I have written you since your letter of the 20th Aug. or not. I wrote Florence the other day a letter all to herself, and I received hers of the 28th this mor'g. You thus notice yours via Eng. came much quicker relatively. I am very well. The cool wave has come & it is so cold that to-day we have fires. With the cold wave came Bourke, who is staying with me, and, of course, we are building castles in Spain. My board has also adjourned. Gen'l Crook is at Oakland, but I am in hopes that he will come down for a day or so while B. is here. We need a "council of war." Judge Williams expects to leave for Oregon about the 15th inst., Mrs. W. to follow with Nellie later. Bourke and I were there last eve'g. Mrs. Royal & Agnes have gone to Nice, France,

to be with Admiral Howell this winter. It is too soon for
364 me to think of going to Europe, yet you ask me if I am better in the way I thought I should be. I think I am, but I don't dare to think of it now. I am glad that you are getting stronger and the color coming to your cheeks again. I am well satisfied that we have done the best thing we could under all the circumstances. I want Florence to learn to swim. I think I wrote you this before. I hope after the 1st June to be a little easier in my finances. I have sold the piano for $125, and it is to go away tomorrow, 10 Sept. Bourke & I called on Miss Fant last eve'g. I think they were much pleased with each other. Mrs. F. and I had a long chat while they, B. & Miss F., were chatting. Mrs. F. is a superior woman, & they are all very clan-ish in regard to church matters. I could not get Gen'l down here; I don't know why; rec'd a telegram from Mr. C. saying that "Gen'l C. cannot go down."

I am at a loss to understand it. We, B. and I, are to dine
364½ with Dr. & Mrs. Baxter this eve'g. I shall be glad to know that you are back with Florence & comfortably settled for the winter, though, of course, I am glad that you went away as you did. Bourke talks me out every night, and I have to say, "I give it up; let's go to bed." To-day is the first clear one we have had for some time, & I think the storm is over. I don't like to say I want to see you, because it makes me think of it & I try and not think about wanting to see you.

With many kisses & a world of love,

Aff'ly yours, SELDEN.

EXHIBIT E. C. D. N. No. 16.

WASHINGTON, U. S. A., *Sept.* 14, '80.

MY DEAR EM.: I went to Oakland Sunday and returned Monday mor'g, having had about six hours' talk with the Gen'l, who is there. He feels very much encouraged about his own prospects; thinks H. will appoint him, but wants me to go to Parkersburg the 21st of this month & meet his old comrades of the army of West Va.

Our changes are all taking place now, and part of the
365 time I have been acting in almost every capacity, A. G., &c., Drum being in Phila. for a few days. Burk leaves tomorrow, & Benjamin also goes soon. There are three A. G. coming here in place of two who go away, so there is still another change liable to occur. It will then be between Corbin & I to go; but you need not worry, for I don't think I can be very badly hurt whatever they do. We have had remarkably cold weather since our hot spell, & it is still cold—fire in my office now. Bourke & I dined with Dr. & Mrs. Baxter while he was here. Last eve'g I called at Gen'l Poe's (Bourke went to Phila. Saturday), & Mrs. P. had a letter from you later than my last, which she let me read. It was a beautiful letter, and you may know, my sweet wife, that I was very proud of it. From there I went — Judge William's, and Mrs. W. told me she had a letter from you. I did not tell her that it was

the second I had heard of that eve'g, but when I came away she said I should read it next time I came. I saw Gen'l Hunter's people, Mrs. Stewart, *et al.* on the street yesterday, so I am
366 glad they have returned, & shall call upon them soon. The McCooks have not yet returned, Gen'l Mc. being west with the President's party. You ask me to tell you who those kind friends of yours and Florence are who send their love to you every time I see them. I don't know to whom I did refer, but I can say, generally, that everybody whom I have met always send those messages. I presume, however, I meant specially our neighbors, the Pattersons, Poes, Uptons, Fants, & Williams. Hereafter, tho', I will try to remember them all. Apropos of this, Gen'l & Mrs. Cook & Mrs. Reed & Bourke all sent messages, as did Dr. & Mrs. Baxter & Mrs. Pursington, when I saw her some ten days ago. I had a note from Mrs. Adams saying that she and her mother have gone to Ft. Minerva, the latter not being well, & that they wanted me to come down & spend Sunday with them. I think they really wanted Bourke instead of —, but as I had to go to Oakland neither of us went. Bourke expects to stop here on his way back. Gen'l thinks he has really gone to Phila. to see Mollie Harbush, as she is there, & that B. is making a big
367 fool of himself in regard to her. Not only this, but that he is not going to win. Gen'l thinks that if B. "wins," then he don't care for the party won; but if he cannot win he nearly breaks his neck over it trying. He may be right; I don't know. I think B. will stop again on his way back. B. & Mrs. C. do not speak yet; presume the breach is irremediable. Mrs. W. told me a good deal about Germany last night, & I have come to the conclusion that you will enjoy next summer there better than this fall & winter, & if you remain longer you will enjoy France better in the fall & winter. However, that is a long way off, & I cannot tell what changes may come to me meantime. You must not tempt me too much, my sweet wife, to come to you, for it may not be best for the time, because when I begin to think of it I find a tremendous tugging of my own heart which I must not now indulge.

Yours devotedly, SELDEN.

Love to my darling little daughter & all our friends.

368 EXHIBIT E. C. D. N. No. 18.

WASHINGTON, U. S. A., *Sept.* 25, '80.

MY DEAR EM.: Yours of the 8th was rec'd by me yesterday mor'g on my return from Parkersburg, West Va., where I went last Tuesday. I met Gen'l & Mrs. Crook and Captain Roberts (the new aide) at Oakland, and from there we went on together. It was quite an ovation for Gen'l C., consisting of parades, speeches, &c., as at all army reunions. I did not make a speech, because I don't know that I could have done any good. Outside of that I think I accomplished all the Gen'l expected me to do. I rec'd a great deal of at-

tention, &, as far a- a good time can be had in this way, may say that I had a good time; but it was a "cool, dusty," long ride there and back, the round trip being about eight hundred miles. Bourke came yesterday, and after dinner we called on Gen'l Hunter's people, Gen'l Benet's, Mrs. Craig (Mrs. Hawkins now), Mrs. & Miss Williams, and wound up at the Fants, where I have not been before since Bourke was here. There was quite a party of Miss Florence Young's friends there, it being her
369 birthday. I don't know how old she is, tho' I told her I thought her about thirty-six. They all sent their love to you and Florence. Bourke has gone this mor'g with Miss Fannie F. to call on some Catholic friends or another. He was going this mor'g, but is not now going till to-morrow. I am going to bring Jno., his wife, & child to the basement the first of the mo. They will all starve — way it is now, and this will give them their rent. This is the first (the one rec'd yesterday) letter I have had from you since the news of my orders reached you. I am not going to worry, but it was and is such a bitter disappointment to me, as you must know from my letters written since. Of course, it is one of those bitter wrongs from which I can never recover. My confidence in the man is utterly and entirely gone, and I must say that I feel such a desire to "repay" that I am almost afraid I cannot be as loyal as I want and intend to be. In this week's Register, which I will send in a day or two, is a "poem," I suppose, from Corbin. I have yet to see anything from his pen
370 that I, being in his place, *I* have want- to attach "H. C. C." to. Of course, I shall keep Florence's little letter, as I do and shall all of yours and hers. You did not say how you were when last you wrote, but I hope you are getting stronger & stronger. I have looked again, and find that you do say you think the treatment at L. has been good for you. I am very sorry, my darling wife, that the 12th of this mo. did not find you on your way back to me, and my heart comes quite into my throat when the thought comes to me; but we must not think. I am learning (as you know I have done about other things) to think without realizing that you are so far away; but you will come back one day, or I shall go to you one day; both better for the separation. Give my love to all our friends and to our dear little daughter, and believe me,

Your devoted husband, SELDEN.

EXHIBIT E. C. D. N. No. 19.

WASHINGTON, *Oct. 9th*, 1880.

371 MY DEAR WIFE: Your last letter is getting quite worn out, so long has it been since I have received one. It was dated the 16th ult. and gave me a description of Florence's schools. The past week Gen'l Ruggles has kept me quite busy calling, &c. We also dined one ev'g with Gen'l Drum's family and once with Col. Curtis. Yesterday, at three o'clock, we drove to the Soldiers' Home and called at Gen'l Potter's & Col. Cogswell's. It seems that Mrs. Cogswell is a cousin of Gen'l Ruggles, and I heard no end of

talk about the Ruggles family, including Sam'l B. I am keeping very busy yet, Gen'l Drum & Corbin being away, Gen'l R. & I being the only ones here. I don't know just what we are all going to do when all the assistants get here; presume, though, either Corbin or I will have to go away. I miss you, my sweet wife, more than I allow myself to think, and when it all comes over me I confess that I don't know as it would be such a terrible thing for me to go away from W., though, of course, I don't want to go at all & don't think I ever shall. People are beginning to come back to the city,
372 and soon it will resume its usual fall & winter sprightliness. Is this last a proper word; I mean correct? I want you to be able to speak German well, and also, if I conclude to join you instead of your coming home, I shall want you to be well up in your French. Don't you think you had best take both Fr. & Ger. lessons at Weimar; or is it not best to carry * * * ? About hearing opera, &c., seem to coincide with those expressed by me in this letter. I hope, my darling wife, you will get all the enjoyment out of your trip that you can. Yesterday, after writing the former part of this letter, I saw Mrs. Williams, took lunch with her, & she told me her most interesting adventures while abroad and what precautions she took, &c., &c., in regard to herself. Of course, I am not going to give you the benefit of he- views, nor yet of mine. You know the only shadow that ever came to me that lasted, how and when it came; but never mind; I won't think or write of it with the ocean between us. With a world of love for Florence & your own sweet self,

Yours aff'ly, SELDEN.

373 EXHIBIT E. C. D. N. No. 22.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Nov.* 6, 1880.

MY DARLING WIFE: As I explained to you in my last, my Nov. payment is delayed on account of the loss of the note, so I send you an advance remittance, 800 m. I don't want you to deprive yourself of little luxuries at all. It is bad enough for you to be off there. Any comfort you can have that I can at this distance give you I shall certainly do so. I shall be glad when the winter passes; and next winter, if you remain abroad, you must go to some more comfortable place. I am glad you have got into the sunlight, and hope you will get the other room also. As you say, after March I shall hope to have my finance- somewhat easier, but the meantime is rather hard to provide for. I don't think I shall save much in disposing of my horse & coupé. They would not bring much,
374 and the expense would not be a great deal less, as I should have to have some one to keep up fires, &c., &c., in the house. I don't like to think you are ever hungry, dear, for I want you to get strong. I am glad you heard the opera Sunday eve'g, & don't think it wrong at all. I am expecting to go to Ft. Monroe, to the naval review, next week, but cannot tell whether I shall or not. I have

been here too closely and must get out somewhere. I don't understand why you have that nervous trembling; do you? Are you careful of yourself, and are you preserving your strength in every sense, dearie? I want you to be so strong that, like Lady Macbeth, you will "bring forth men children only" when you come home. Col. Martin is here & in his office. Gen'l Breck writes that he is more than satisfied with his change & St. Paul. The President & all the absentees are getting home now, and soon the city will be all agog with Congress & the coming inaugural. If I am here it will be the first I have ever attended. They say it's a great bore, the weather being particularly terrible
375 at that time of the year. Mrs. Underwood has not yet returned, & Mrs. Dickson, I think I told you, is living in the Fox house with her son-in-law, a Lt. Read, who is on a year's sick leave. All the other neighbors & friends are well & send their kind regards to you & Florence. Gen. Carroll was here a day or so ago & wished to be specially remembered to you both. He is living in the country. The enclosed draft must be signed by you as E. D. N., you observe. Did I tell you that Levy Bailey has been ordered East; don't think they intend to put him on duty very soon, but retire him when they can. This letter is only to enclose this draft; shall soon write again. With a world of love to you & our dear little daughter, & another precaution in regard to your own dear self,

I am, your aff. husband,

A. H. NICKERSON, *U. S. A.*

Mrs. E. D. Nickerson, Weima, Germany.

I put all this on here to be sure & guard against accident.

376 EXHIBIT E. C. D. N. No. 23.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Nov.* 18, 1881.

MY DEAR EM.: I have delayed writing from day to day, expecting the inclosed deed, which has only just come. Please go before the consul and acknowledge the same in proper form. You can procure of him a large envelope, and forward it at once from his office, taking care to have the proper amount of postage paid. I don't know that it makes a great deal of difference, but many of your late letters, written on heavy paper, have postage to collect here. I think, however, they come just as safely. You will have received ere this my last draft, which covers the time mentioned in your letter, rec'd yesterday, dated the 3d inst., and enclosing one from your mother. As soon as I can get returns from any of the sales I have effected I shall proceed to send you what I owe you, and also enough outside, so you can change your
376½ residence without embarrassment or waiting for advices from me. I take it for granted, tho', that as you are now confortably settled you will not care to go south until next season. I am comfortably settled with two naval officers to share my house & the ex-

pense. I only hope I shall not have to move before spring. In your letter last previous to the one above mentioned you mention some of Florence's routine. I am glad she gets to bed by eight, for she certanly has a busy life, and she must have good, unbroken rest at night or she cannot endure it. I hope that on the first appearance of her being overtasked you will cut down her work. She is such a nervous, excitable child that two much boisterous play—that is, when she runs & gets so excited—is also bad for her. I came very near commencing the law course here this fall, but finally concluded not to do so. I have just been to see Judge Williams, who has just come from Oregon. He is trying to sell their
377 house on R. I. Ave., and I am afraid will have difficulty in doing so. I did not ask him how long he was going to be here, but presume he will remain during the session, which commences in December. He says that Mrs. Williams is quite well and pleased with the change. I did not ask how Miss Nellie liked it, but presume she does, for it seemed very dull for her here. I presumed that Miss Kate would soon pick up some one and wondered that she had not done so ere this. I hope he will prove to be a good fellow.

Yours aff'y, A. H. NICKERSON.

EXHIBIT E. C. D. N. No. 24.

WASHINGTON, U. S. A., *Nov. 28th*, 1880.

MY DEAR WIFE: I had an invitation to dine Thanksgiving Day at Judge & Mrs. Williams', but, as I think I wrote you, had already accepted an invitation at Gen'l Ruggles'. It was a very nice dinner and I enjoyed it very much, being the only guest. You were
378 not only remembered, but toasted, and we wondered if you had information of its being thanksgiving day &, if so, if you were not wondering where I had my dinner. I called at Judge Williams' last eve'g & took him down to call upon Garfield; found no one in. I thought the Judge was not looking so well last eve'g, but perhaps it was because he was not shaved & his beard being a few days old & of grizzled hue it makes him look older. We are still having quite wintry weather for Washington, but Mrs. Williams says Germany is bleak & dreary in winter. I shall be glad when it has passed. I am devoting as much of my time as possible to my lecture, and am to deliver it at the opera house — on the eve'g of the 10th prox. instead of the 7th, as I wrote you. It will, perhaps, occur to you that if it is for the benefit of the poor it must be for our own benefit, for no one seems quite as poor as we are. They are having an unprecedented excitement in the stock market (R. R.) in New
379 York, but I presume they will also have a reaction & plenty of people ruined. They say the Northern Pacific R. R. is to be finished within three years. Perhaps our Puget Sound bond may bring something yet, tho' I don't base much hope upon it. Society is beginning to look up, and dinners, germans, &c., &c., are getting to be the order of the day. I don't think I want to go to the army

& navy assemblys this winter, & presume I shall not be a member even. Perhaps I may take up French. They say there is a very good teacher by word of mouth conversation. It may be well for me to take it up that way &, perhaps, write as much as I can myself. If I do that, tho', I shall miss my sweet teacher. Gen. Williams has been trying for the ch'f signal office with, I think, no chance of success. Do you know I feel quite nervous over my "appearance" in the lecture field? I shall be anxious till it is over. I am getting quite out of society, & by the time you return I think few people
380 will know that I am in Washington or alive even. I have not yet heard whether your uncle & party sailed on the 20th or no; presume they did. I am very, very glad.

With much love to all our friends, my most devoted to the dearest & best of wives & daughters,

Your aff. husband, SELDEN.

My Dear Little Daughter: Mamma writes good accounts of you, and I am very proud of my little daughter; indeed, I always have been proud of you. You are a dear, warm-hearted, loving little daughter, and I hope you will always be as great a comfort as you now are to your mother & your affectionate father.

A. H. NICKERSON.

Exhibit C. D. N. No. 25.

Washington, *Dec. 6th*, 1880.

My Dear Em.: I don't exactly know when I wrote you last,
381 as I have been engrossed with my lecture. I had not finished this sentence, and you letter of Nov. 14 lying open before me, when Sheridan handed me yours of the 17th Nov., in which you ask me numerous business questions. You will have rec'd c'k ere this, & the amount to Jan. 1st is about what you estimated for. I don't want details, my dear wife. Do what you please with what you have, and as soon as my press is over you shall have all I can possibly spare, and our finances need not worry us. I am not going to worry about my station at all. The other eve'g Mrs. Stine gave quite a dinner party, and among them was a gentleman (& wife), a naval officer, who says that Italy is the best place in Europe to live—that is, one can have more comfort for their money there than elsewhere. He spoke of Florence in winter and the baths of Lucca in summer. I want you to leave Germany as early as next fall, anyway, if you remain abroad. Mrs. Stine breaks up housekeeping this week, or, at least, I do not go back when I re-
382 turn, as she will soon break up, having rented her house for the winter. I shall probably take my meals at the Café Riggs. I expect to leave here Wednesday eve'g and don't know just when I shall get back. I confess that I am nervous in regard to my lecture, and may throw in a story or two to relieve the dryness of it. In a cultivated audience this detracts from it; as "Shake." says, sets on some barren spectators to laugh but cannot,

but makes the judicious grieve, & what I want is that those who hear it shall think of it afterwards. I have had it printed (cost nothing), and send you a copy. Of course, I shall not let it be read by any but you & our family; so, please you, be careful of your copy. I am going to write a note to Florence. With much love for you both,

Yours, aff'ly, SELDEN.

I am to pay the note due Nov. 1st, & last, some time this month, $515.00.

M'ch 6th, on house	$500
With interest on all	100
	$600
Brodericks	$500

383 Each year $500, with interest decreasing, in aggregate, each year.

Taxes on Portland & Puget Sound property unknown, but estimate not far from (year) $75.00.

EXHIBIT E. C. D. N. No. 28.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *April* 6, 1881.

MY DEAR EM.: I write to-day simply to inclose c'k for 400 m., and wonder if this will carry you through to June 10th, for this is part of my April pay. I had to get it in advance to pay my balance St. improvement taxes, &c., so I send yours at the same time. I hope to hear soon of your return, & trust you will not get into the hands of any doctor.

Yours of the 20 ult. is the last, and in it you say you are going to Hull for a consultation, &c. Give my love to our dear little daughter & return the same for yourself.

Aff'ly yours, # A. H. NICKERSON, *U. S. A.*

Mrs. E. D. Nickerson, Weimar, Germany.

Signed this way because contains c'k & might be lost.

SELDEN.

384 EXHIBIT E. C. D. N. No. 30.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *June* 25, 1881.

MY DEAR WIFE: Yours of the 9th is this moment rec'd. I am in hopes you will get this before you go away, though. I think I have written approvingly of all your plans, so that you will not delay. I think your ideas are all good—*i. e.*, go to Norderney, return to Dres-

den. The six months ahead for the latter place is far enough to plan; tho' meantime I will find out all I can relative to Florence. I think that is probably the best place to think of as your next stopping place. I am glad you will take Florence home with you and employ a governess, as you say. I like your ideas about her German, and think, now she is in Germany, she had best get as much good out of it as possible before she goes elsewhere. It seems to me that a French teacher will be better for the French language, and what you say about disapproving of a teacher who has Ger-
385 man pronunciation is quite in accordance with my own ideas. About finances, all you have to do is to tell me far enough ahead what you will need—no details—from such a time to such a time, to make yourself & F. reasonably comfortable. I will then attend to it or tell you what I can or cannot do. Mrs. Ruggles & family left day before yesterday via Baltimore st'r to Boston for Nantucket Island, where they will spend the summer. The General went with them as far as Baltimore and returned the same ev'g. I spent the ev'g last with him, tho' I did not stay late. He is to have a navy & an army officer stay with him, taking his meals out of his house. Gen'l & Mrs. Sypher go to Rock Enon, leaving for that point to-day. I understand that the Poes may go to Coburg. The weather this week has been so cold that few wanted to go away, and those who have gone wish they were back again. Col. Fourhetove has returned. Miss Rochel Sherman is with Senator Thur-
man's family in Paris. Judge Key, of Georgetown—you
386 remember the two Misses Key, short blondes—have gone to Europe for a six months' tour. Col. & Mrs. Bacon go to Long Branch this summer, I believe. The Col. almost always enquire- about Florence. I saw him the other day with "Johnny," the baby Florence used to know, taking a walk. He is a very handsome little fellow, with blonde hair & eyes that are either blue or grey, I don't know which; they are not black. Bessie Fant has, I think, grown taller than any of her sisters, and as soon as she puts on long dresses will look as old as any of them. Many people have already gone from the city and this week will take many more, and from thence to fall it will seem like a continuous Sunday in the Capital. No place so dead as this in summer. Other cities have business that must be done & keep them up, but with the exception of the few officers & clerks who stay, as it were, to keep house, the city is deserted. I think no one should live here after July 1st or return till Oct. 1. I am going out none at all, not even to drive; read
387 a great deal; reading Bulwer & others over again. Occasionally play cards at the club, but seldom. Ruggles said last eve'g he would teach me pickit, when I told him no; that I knew enough of cards already. I hope you will find Norderey pleasant, and that both you and Florence will be greatly benefitted by your baths. Love to her and all our friends.

Yours aff'ly, SELDEN.

EXHIBIT E. C. D. N. No. 32.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Nov.* 9, 1881.

DEAR WIFE: The consul should follow strictly the form used by the commissioner for Oregon in his certificate as to your acknowledgment, which should follow and be witnessed as you see. Your signature should be Emma D. Nickerson and be immediately under mine.

Very aff'ly, A. H. NICKERSON.

Of course you understand you go to the consul's office in Dresden—consulate of the U. S. America.

388 EXHIBIT E. C. D. N. No. 33.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, U. S. A., *Nov. 7th*, 1881.

MY DEAR EM.: Yours of the 20th ult. is the last I have received from you. I waited until to-day to send the draft enclosed. I am very sorry that you and Florence are not well, and while your aunt is looking around in the South I hope she will find a place where you will be able to go after a while and be better than you are now. I don't like, now that you are settled, for you to get again unsettled until spring if we can possibly avoid it. I have been in some trouble as to what to do myself, but think now we have arranged for the winter, renting a house & living with two naval officers as companions. The house is one of a pair built on a lot just beyond the Fants. They asked a terrible rent for it, $100 per month, but we get it now for $83⅓ per m., which makes each $28. We shall keep house, with John & his wife & an aide as servants. This will
389 be better for me than boarding, as I cannot get any place to live for less than $75 per month. Mr. Gillett has sold our lot and a half in Portland for $7,000, leaving one yet to sell, for which he had been offered $4,200, my price being $5,000. Mrs. Williams is looking after it, & I shall sell if she says so. While I was sorry on some accounts to let the little house go, I feel that it has been well. They all say, men who have built, &c., that an old house made over is more expensive than a new one, & is an old house still. Besides, I shall be glad to be out of debt again, & if I have my senses I shall not again get in. Col. Mrs. Royall & Miss Agnes are here. I have called three times, but have not seen them yet, except that I met Col. & Mrs. on the streets. She has grown quite gray; otherwise looks natural. I hope that my next letters from you will show that both you and Florence have fully recovered.

With love to Florence, I am aff'ly yours,

A. H. NICKERSON.

390 EXHIBIT E. C. D. N. No. 35.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Feb. 3d*, 1882.

DEAR EM.: Your last letter was inclosed with one from Florence & dated 9th Jan. I do not know whether I have expressed myself about your going to Italy or not, but think you have chosen well to remain in Germany. If it is too warm in Dresden in the summer I have no doubt but that you can find some cool place near, or as near as Switzerland, and, after the summer closes, then go to Italy for the winter. All the choice I have about the matter is that, if possible, Florence have the benefit of good French teachers after she gives up German. I presume she can have them as well in Florence or other parts of Italy as in France. I have not yet sent you your allowance for Feb. I understood that you could square all your accounts for Jan. with about 350 m., including doctor's bill.

I will therefore send you before the end of this month 800 m.,
391 when you can pay yourself what you have borrowed from yourself. Mrs. Crook, Dr. & Carrie Summers are still here, though I have not seen them for some time. Dunn Thayer is also here. The Rumseys have all moved to Santa Fé, New Mexico, where they have a new hotel. Henry Rumsey keeps the Sidney Hotel. Lt. Schuyler has resigned from Gen'l Crook's staff & gone to his company. I don't know who is to succeed him. I send 2d sight of former draft for fear the 1st has been lost in the mails. I am glad you have a room for Florence and shall hope that you are both comfortable.

Aff'y, A. H. NICKERSON.

EXHIBIT E. C. D. N. No. 39.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *April* 27, 1882.

DEAR EMMA: Although I am in doubt as to your whereabouts, I send you draft for 1,000 m., which will, I trust, liquidate my indebtedness up to June 1st. I presume Florence has had her Easter holidays and by this time has returned to her studies. I
392 think you are quite correct in regard to not pushing her too rapidly for fear of breaking down her health. As much as I desire that she shall be a good scholar in French, I don't think it will be best to break her up in her German, in which, I infer, she must have made fair progress. I have just learned of the serious illness of Mrs. Crook, at Oakland. I am advised that she is now better. I hope that wherever you and Florence are you are both as comfortable as you can be, and when the warm weather comes I trust you will take her to some cool place, where she can recuperate and be ready for her fall studies. Tell her that I anticipate much from her English copies that I sent and shall expect her to do more

and more writing to me. It will be good exercise for her, besides being able to let me know how she is progressing. Give her all the recreation you can, with good diet.

Yours aff'l'y, A. H. N.

393 EXHIBIT E. C. D. N. No. 40.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *May* 31, 1882.

DEAR EM.: I enclose draft for 1,000 marks, and trust that you will accumulate as much as possible for future expenses. I am well pleased with Florence' reported progress and presume you are doing the best you can with her and her expenses. I am glad she will be in such good hands as you say she will when you are absent from her. I do not know what my conveniences will be for remitting money after this. My order for Arizona places me in doubt as to my future, but presume I shall have conveniences for sending money in time to meet current bills. I shall be glad to know what money — in all, I mean — you will have on hand, as near as you can estimate, on July 1st. I shall send all I can spare, and as often as possible and hope that all possible pains will be taken in the expen-
394 ditures on account of Florence'- education and accomplishment. Mr. Charles Bancroft was here a few days since, and sails for London, in a short time. I understand that he will visit Mr. A. L. B. before he returns, & will probably see you. Mrs. Crook & Mrs. Read are here again. I saw them yesterday. I do not think they return to Omaha before fall, if they do then. If Florence has time I shall be glad to hear from her. I should like to know that she has improved in writing. I hope she will take good care of you.

Aff'l'y, A. H. NICKERSON.

395 In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, & LENA DILLER CARTER. } No. —.

WASHINGTON, D. C., *Dec.* 22*nd*, 1885—8 o'clock p. m.

Met pursuant to agreement.

Present on behalf of the defendant-, Mr. Garnett and Mr. Robinson; present on behalf of the complainant, Mr. J. J. Johnson.

LENA DILLER CARTER, a witness of lawful age, being first duly sworn, is examined by Mr. GARNETT:

Q. What is your full name?
A. Lena Diller Carter.
Q. Are you one of the defendants in this suit?
A. Yes.

Q. Sometimes called Lena C. Nickerson?

A. Yes, sir.

Q. You have stated in your answer that you have no knowledge of any conversation between Major Nickerson and the complainant, which are alleged in the bill, with reference to his settling any property on her?

396 A. I have no knowledge of any such conversation.

Q. Have you any knowledge as to what property was owned by the defendant, Azor H. Nickerson, in the spring of 1870?

A. None whatever.

Q. Did you at any time enter into any conspiracy with Azor H. Nickerson or William B. Matthews or either of them?

A. Never; I never did.

Q. Did you at any time entertain any purpose of in any manner injuring or defrauding the complainant in this suit?

The foregoing question is objected to by counsel for the complainant as leading.

A. I never did.

Q. Previous to your marriage to the defendant, A. H. Nickerson, had you any knowledge as to what property he owned or where the same was located?

A. I had none.

Q. Did you know whether or not he owned any property in Oregon?

A. I never did.

Q. Did you have any part in or in any way assist or suggest that the complainant in this suit should leave this country?

The foregoing question is objected to by counsel for the complainant as leading.

A. I did not.

397 Q. Have you any personal knowledge as to why the complainant in this suit did go to Europe?

A. I have none.

Q. Have you any knowledge of the circumstances connected with the departure of this complainant for Europe?

A. I have none.

Q. Did you have any knowledge of the fact that the defendant, A. H. Nickerson, had gone to Philadelphia to hire rooms there?

A. I did not.

Q. State when you first learned of the institution of the divorce suit by the defendant Nickerson against the complainant?

A. The first I heard of it was in the latter part of May. I cannot remember the exact date—the latter part of May, 1882.

Q. Do you know how long that suit had been instituted at that time?

A. I do not know that.

Q. Previous to that time had you any knowledge that the defendant Nickerson intended to institute a suit for divorce?

A. I had no knowledge of it.

Q. Was there any intimation of such a purpose made to you?

A. None; no intimation was made to me; I had no idea of such a thing.

398 Q. When did you first learn that a decree for divorce had been passed in that suit?

A. On the 31st of March, 1883.

Q. How did you come to learn that fact?

A. Major Nickerson told me on the evening of that day that he had procured a divorce from that person.

Q. Was any request made by him of you at that time?

A. Yes; he asked me then if I would marry him and marry him immediately.

Q. What was your reply to that?

A. I told him that I did not wish to do so at all; that my sister was very ill, and for many reasons I could not think of anything of that kind; I thought it much better to defer until later; but he urged it strongly and said that he was compelled to go West on business, and would feel better satisfied if I would marry him right away; he said that he would not ask me to leave my sister, who was so ill, but that if I would marry him he could do a great many things for myself and family which he could not do otherwise. He was very much afraid that if the divorce became generally known my family would oppose it to the utmost, as he knew their dislike for anything of that kind; but if it was a fact accomplished they would have to submit.

399 Q. When did you consent to marry him?

A. On that evening I consented to marry him on the following Monday, April 2nd, 1883.

Q. At that time had you any personal acquaintance with the defendant, William B. Matthews?

A. None whatever; I did not know that such a man was in existence.

Q. On the 2nd day of April did you see the defendant, Azor H. Nickerson, and did you go anywhere in his company?

A. On the 2nd day of April I left the house with Major Nickerson, went to Baltimore, and was married there by the Reverend J. P. Sands, No. 207 Gilmore street.

Q. Who went with you to Baltimore, if any one?

A. No one went with us to Baltimore, but at the depot we met William B. Matthews, and I was introduced to him then for the first time.

Q. Who introduced you to him?

A. Major Nickerson.

Q. How do you know the decree of divorce had been obtained previous to that time?

A. Because he showed me a copy of the decree.

Q. When did he show you that?

A. On the morning of April 2nd before we left the city.

Q. You speak of leaving the house; whose house was that?

400 A. The house was owned by Major A. H. Nickerson.

Q. Who lived in that house?

A. It was rented by my mother, Mrs. Carter. In the fall of 1882 we had a furnished house, and our first intention in taking this house had been to rent rooms, as we had done before; and my sister's health being very poor and she disliked the noise and disturbance of moving, so we desired to take a house furnished; that was in the fall of 1882. We found it difficult to obtain a house within our means, and after looking at quite a number Major Nickerson suggested to my mother and urged her to take his house, which he said he could let her have at a moderate rent if she would allow him to retain two rooms in the third story and board him. This she finally consented to do, and on the first day of October we took the house.

Q. Who went with you to live in that house?

A. My mother, my two sisters, and my niece.

Q. What part of the house did Major Nickerson occupy?

A. He occupied the two third-story front rooms.

Q. What part did your mother occupy?

A. My mother and sister occupied the second-story front room; my other sister and myself the second-story back room, and my niece the third-story back room.

401 Q. I understand you to say that Major Nickerson boarded with you?

A. Yes, sir; Major Nickerson boarded with us, and we paid him $80.00 a month rent, and gave him two rooms with attendance, fire, gas, etc., besides board.

Q. After your marriage, where did you go?

A. After our marriage I returned almost immediately to Washington, to my home there. I told my mother what I had done and she was very indignant, and also my sisters. She told Major Nickerson that if it were not for the condition of my sister's health she would leave the house that night and never live under the roof with him again.

Q. At that time had anything been told to you or brought to your attention that would in any way cause you to doubt the legality of this divorce?

The foregoing question is objected to by counsel for the complainant as incompetent and immaterial.

A. There had not; he never did tell me anything about it.

Q. You state that he exhibited the decree of divorce to you on the morning of the 2nd of April?

A. Yes, sir.

402 Q. At the time of your marriage to Major Nickerson had you any cause to doubt your right to make that contract?

The foregoing question is objected to as incompetent, irrelevance, and inadmissable.

A. I had no cause to doubt that it was perfectly legal and I entered into it with the full belief that it was binding in every way.

Q. When did you first learn that there was any question about the regularity or propriety of the divorce proceedings?

The foregoing question is objected to as incompetent and immaterial.

A. The first I heard of it was on the 21st of May, 1883.

Q. How did you learn this?

A. I saw it in the newspaper and I think — asked Major Nickerson about it. He then acknowledged that that person had returned from Europe and intended to make some trouble, but he said that it would not amount to anything; that it was a blackmailing scheme to extort money from him, and for me not to worry myself at all about it.

Q. When did you first have cause to consider these divorce proceedings, or rather these proceedings to set aside the divorce, as amounting to anything?

A. Between that time and the 30th of May. I, of course, was very uneasy after I heard these things, and I made inquiries from
403 two or three persons and became satisfied that there was something wrong.

Q. What step, if any, did you take in the matter?

A. Between the 20th and the 21st of May I, of course, heard a great many different stories; but on the 30th of May I made up my mind that the proceedings had been wrong in some way, and that there was a mistake about something. I then told Major Nickerson that I would not allow him to stay in the same house where I was; that it was impossible for me to leave, and that he must do so, and on that day he took his trunk away, left the house, and we separated.

Q. Up to that time had you had any conversation with Nickerson in reference to the property involved in this suit?

The foregoing question is objected to as incompetent and inadmissable.

A. On the second day after my marriage Major Nickerson wished to give me his real estate and personal property, but I said I did not want any one to think I had married him from a mercenary point of view. He spoke of it once or twice after that, and said that he would carry out his previous intention, and that he would have a deed prepared giving me the house and furniture.

404 Q. You say that he spoke to you on the second day of your marriage; had you had any conversation with him about this house previous to that time?

A. I had not. I never had any conversation whatever with him about it.

Q. When did you receive the deed for that house?

A. I think it was on the morning of the first day of June, 1883.

Q. Was any consideration paid by you at that time?

A. I paid $1.00 as consideration.

Q. Why did you do that?

A. Because he told me it would be legal — as a matter of form.

The foregoing questions and answers with reference to the deed for the property are objected to as incompetent and immaterial.

Q. You state that he told you that he was going to carry out his

first intention of settling his house upon you; did he give you any reasons for that intention?

A. He said that he thought very likely his divorce would be set aside, and that I had been cruelly wronged, and that as I had married him in good faith he thought this was a very, very small and very poor reparation.

Q. On what date was the bill of sale received by you?

A. I think that it was on the same day—on the 1st of June, 1883, and at the same time.

Q. When did you take possession of the property?

405 A. I had possession at that time, and I have had it ever since.

Q. At the time of receiving this deed were you informed that the complainant in this suit had any rights in this property?

A. I was told that she had none whatever and never had had any.

Q. Did you have any knowledge on that subject yourself?

A. I had no personal knowledge of it.

Q. You are charged in the bill with having formed plans with Nickerson concerning this divorce suit. What have you to say about that?

A. I will say that it is utterly untrue. I never formed any plans with Major Nickerson or any one else to defraud that person out of a cent in the world.

Q. What have you to say about plans concerning the divorce suit?

A. I never made any plans or had anything to do with the divorce suit in any manner, shape, or form.

Q. How about having any knowledge of the suit?

A. I had knowledge of the divorce suit, but I thought that Major Nickerson had a perfect right to obtain a divorce, as he told me——

406 Counsel for the complainant objects to the statement of any conversation between the witness and Major Nickerson.

The WITNESS: He told me that he had lived for years in the greatest unhappiness with this person; that she had gone away against his will to live in Europe; that she had taken his child and had utterly broken up his home; he was a very delicate man and might die at any time.

The foregoing answer is objected to because Major Nickerson has filed his answer in this cause, and it is now being taken, and for the further reason that it is hearsay.

The WITNESS: It is not hearsay; it is knowledge.

Q. You state that you had knowledge of the divorce suit, and that you first acquired that knowledge in May, 1882?

A. Yes, sir; in the latter part of May, 1882; after the divorce suit had been instituted.

Q. You are further charged with having entered into a conspiracy with A. H. Nickerson and William B. Matthews to induce the com-

plainant to go to Europe and to defraud her out of her rights in the property involved in this suit. What have you to say to that?

A. I have to say that it is all utterly untrue. I could not
407 enter into a conspiracy with a man that I had never seen or heard of.

Q. How long had you known Major Nickerson at the time you consented to marry him?

A. I had known him for many years. He had been a friend of our family, or he pretended to be, for a number of years.

Q. At the time of your marriage did you know what property was possessed by A. N. Nickerson?

A. I know that he owned a house.

Q. Did you know of anything else?

A. I did not know of any other property; I never heard anything about it.

Q. Did you know where the legal title to the house was at the time you married him?

A. I did not.

Q. It is charged against you that this conspiracy was formed between you and Nickerson and Matthews previous to the leaving of Mrs. Nickerson for Europe, and that one of its objects was that you were to marry Major Nickerson as soon as he could obtain a divorce?

A. I have to say that it is all utterly untrue.

408 Cross-examination by Mr. JOHNSON:

Q. How old are you, Miss Carter?

A. I am 27 years old.

Q. When did you first learn that the complainant had gone to Europe?

A. I cannot remember the exact date; it was some time after she had gone.

Q. From whom did you learn it?

A. I was told by Major Nickerson himself, at Rock Enon Springs, in the presence of myself and family and a number of friends.

Q. Where do you now reside?

A. I reside at No. 7 Dupont Circle.

Q. After your marriage with Major Nickerson did you express to New York some articles belonging to the complainant to a relative of hers, under the name of A. H. Nickerson, and did you write a letter at that time informing the relative that these articles were sent, and sign A. H. Nickerson's name to it?

A. I did, at his request. I told him that there was a number of things upstairs belonging to that person, and he asked me to send them to the address of a relative of that person and write a few lines saying that they had been sent, which I did.

409 Q. Whenever you used the term "that person" in your testimony, to whom do you have reference?

A. I have reference to the complainant.

Q. Did you correspond with Major Nickerson while he was in

Philadelphia from the time he states in his answer that he went there to live up to the time the divorce was granted?

A. I did not.

Q. You did not hear from him from the time he left Washington up to the time he returned and asked you to marry him?

A. No; I did not.

Q. At what time in May did you hear about this divorce being granted?

A. On the 21st of May, 1883. Do you mean at what time I heard about there being a divorce suit or the first time I heard about the legality of the divorce?

Q. At what time did you first hear that this divorce suit was instituted?

A. I heard that in the latter part of May, 1882.

Q. Did you hear it before the decree was passed or after the decree was passed?

A. I heard it before; that he had instituted proceedings for divorce.

Q. From whom did you hear it?

A. From Major Nickerson.

Q. How did he come to talk to you of the fact that he had
410 instituted a suit for divorce; what led him to say to you he had brought suit for divorce?

A. I cannot remember all the little things connected with it, but I remember distinctly of his being at our house one evening, and we were sitting in the window talking, as we often did. He told me then that he wished to confide in me; that he was in a great deal of trouble, and that he had confidence in me, and he wanted to tell me something about his private affairs. He then said that this woman had left him against his will, and that he had some time previous to this conversation instituted proceedings for a divorce. He said that he was entitled to a divorce; that they had lived unhappily for many years; that his life was perfectly wretched, and that she was a woman utterly unfit to be the wife of any good man.

Q. You said that Major Nickerson gave as a reason for desiring you to marry*ing* him at once that he wished to prevent talk about the divorce?

A. No; I did not say so.

Q. What did you say?

A. I said that the reason he urged me to marry him was because he was going West almost immediately, and he knew that if my family found it out they would be very much opposed to it.

411 Q. Did you know the fact that your family would be opposed to it?

A. I did.

Q. And you went off and married him?

A. Yes, sir; I married him; very, very wrongly.

Q. You say that you went to Baltimore in the morning of April 2nd, 1883, with Major Nickerson, where you were married, and that you met Mr. Matthews at the depot in Baltimore. Did Mr. Matthews go along with you as a witness to the marriage?

A. He did.

Q. When Major Nickerson asked you to marry him did you ask him any of the particulars touching the granting of the decree for divorce from the complainant?

A. I was very ignorant of these things, and I believed what he said, as he showed me a telegram from his lawyers saying that it had been granted, and I was full of confidence in my belief that it was so.

Q. I further understood you to say that when it was announced to your mother she was very indignant, and said that if it were not for your sick sister she would leave the house.

A. So she did.

Q. Did she ever leave the house?

A. She did not; my sisters never permitted of it.

412 Q. You further testified that you were told that at the time you received the deed the complainant had no rights in this property; what led to that conversation about the complainant having no right to this property?

A. I do not remember what lead to that, but I remember his saying at the time that he had a perfect right to give me this property.

Q. Did you ever drive out with Major Nickerson in his phaeton before your marriage with him?

A. Alone?

Q. With no one but Major Nickerson and yourself.

A. I did not.

Q. You have mentioned in your examination-in-chief something about you being at Rock Enon Springs. At what time did you go there?

A. In the summer of 1880.

Q. In what month in 1880?

A. In August; in the latter part of July or early part of August, and we stayed there through August to the first of September. I went with my two elder sisters, and my mother came immediately after, but up to the time she came I was in charge of Mrs. Carson.

Q. How long did you remain there?

A. I think we were there about six weeks altogether.

Q. Did you return home or come back at all during that time?

413 A. I did not.

Q. Who returned home with you?

A. My mother and sister.

Q. Anybody else?

A. No one else.

Q. Did you ever go to the Church of the Ascension with Major Nickerson and nobody else?

A. I never did.

Q. Are you acquainted with Mrs. Rodney M. Mason?

A. I am not.

Q. Were you not introduced to Mrs. Mason and Mrs. Breck at Rock Enon Springs by Major Nickerson?

A. I was introduced to Mrs. Breck and to General Breck by Major Nickerson.

Q. Did you meet Mrs. *Carson* (Mason) there?

A. I met her going there long before Major Nickerson ever came to the springs.

Q. Did you meet her at the springs?

A. No; I did not. I met her at Winchester. She was there all the time I was there. I do not understand the question.

Q. Do you recollect who had the adjoining room to the rooms you occupied at Rock Enon Springs?

A. I think that Mr. Worthington had them, but I am not positive.

Q. Was it Mrs. Trippie, of Baltimore?

414 A. It may have been, but I could not speak positively about it, because I did not know the person at all.

Q. At what time did Major Nickerson come to Rock Enon Springs?

A. I cannot remember the date, but it was the latter part of August.

Q. How long did he remain?

A. The first time he came he came on Saturday and returned on Monday. I do not think he staid longer than that.

Q. Did you receive a letter from Major Nickerson while you were at Rock Enon Springs?

A. I did not.

Q. Who did he go to Rock Enon Springs to see?

A. I have no idea at all.

Q. Did he or did he not spend the greater part of his time while there in paying attention to your family?

A. No; he did not, any more than the rest of his friends there.

Q. State the names of the other friends with whom he spent his time.

The foregoing question is objected to by counsel for the defendant as incompetent and immaterial.

A. I saw him a great deal with Admiral Stevens' family and with this Mrs. Mason you speak of, and with others whose names
415 I do not remember.

Q. You would know Mrs. Mason when you saw her?

A. Yes, sir; I would know her by sight.

Q. Do you recollect going into the Church of the Ascension and taking a seat directly back of Mrs. Mason?

A. I do not know where Mrs. Mason sat.

Q. Did you ever call at the War Department to see Major Nickerson.

A. Certainly not; I never did alone, never.

Q. Who went with you?

A. I went twice in the winter of 1879, and both times with friends who wished to see the building.

Q. Did Major Nickerson ever show you or read to you extracts from Mrs. Nickerson's letters while she was abroad?

A. He did not.

Q. You are positive of that?

A. Yes, sir; I am positive of that. He told me repeatedly that he never corresponded with her.

Q. You do not believe that now, do you?

A. I do not care.

Q. Did he say anything to you about Mrs. Nickerson while she was abroad?

A. Only what I have stated that he said at the time, about the proceedings for divorce having been instituted.

416 Q. Did he say anything to you about Mrs. Nickerson being abroad previous to the occasion you have mentioned, when the institution for the suit for divorce was alluded to?

A. No; he never said anything to me privately. He spoke of her having gone there to live in the presence of my family and several friends.

Q. Was that the only conversation he had with you touching the absence of Mrs. Nickerson?

A. That was the only conversation he had with me when he spoke particularly of her.

Q. When did you come to Washington to reside?

A. It has been so long ago—I suppose fifteen years ago.

Q. When and where did you first make the acquaintance of Major Nickerson?

A. I first made the acquaintance of Major Nickerson in Salt Lake City.

Q. In what year?

A. I think it was in 1875; in 1874 or 1875.

Q. Was Major Nickerson residing in Salt Lake City at the time?

A. He was not.

Q. Did you see him frequently while you were residing in Salt Lake City?

A. I only saw him once, for a very few moments, at a party.

Q. When and where did you next see him?

417 A. I think the next time I saw him was in New Orleans.

Q. Were you living in New Orleans at that time?

A. I was not; I was simply there spending the winter.

Q. Was Major Nickerson on duty at New Orleans at that time?

A. I do not think he was.

Q. How often did you see him in New Orleans?

A. He was stopping at the same hotel we were, and I saw him, I think, while he was there—just to speak to him a few moments—every day.

Q. When and where did you next meet Major Nickerson?

A. In this city.

Q. Fifteen years ago?

A. No.

Q. At what time and place?

A. In 1879; the winter of 1879.

Q. Was Major Nickerson a frequent visitor at your house during the time he resided in Washington?

A. Yes; he came quite often.

Q. Did the complainant visit your family?

A. She did.
Q. Please state how often.
A. Quite frequently.
Q. How many times, as near as you can recollect?
A. Quite often, I say; but I cannot remember the number of times.
418 Q. Did she visit your house a dozen times?
A. That many, and more.
Q. Did she visit you two dozen times?
A. I cannot tell the exact number.
Q. Where did you reside when the complainant visited your family?
A. Part of the time at 1212 G street, and part of the time at 1215 K street.
Q. Who first introduced you to the complainant?
A. Major Nickerson.
Q. Where?
A. In Salt Lake City.
Q. Who paid the first visit in this city, you to Mrs. Nickerson or Mrs. Nickerson to your family?
A. She being a stranger here, of course we called on her first, at lrer husband's request.
Q. Is it not a fact that the first visit you made to Mrs. Nickerson was in company with Major Nickerson?

The foregoing question is objected to by Mr. Garnett as incompetent and immaterial.

A. No; it is utterly untrue.
Q. You never went to the house of the complainant, then, in company with Major Nickerson?

The foregoing question is objected to by Mr. Garnett, because the witness has not stated that she never went there in company with Major Nickerson.

419 A. Once or twice Major Nickerson stopped at our house and asked me from his wife, so he said, to come to dinner, and I did so; but not over twice.
Q. After the complainant left for Europe and before your mother rented the house of Major Nickerson was Major Nickerson taken very sick at your house on one evening, and did you have to send for John, his servant man?
A. He was not.
Q. You have testified, as I understand, that Major Nickerson, in speaking to you about giving you this property, No. 7 Dupont Circle, stated that he desired you to accept it because he had cruelly wronged you; am I right about that?
A. No; I don't think I said that he had cruelly wronged me; but he said that a cruel wrong would be done to me if this divorce was set aside.
Q. He did not say anything to you about the cruel wrong perpetrated upon the complainant by him?

The foregoing question is objected to by Mr. Garnett as being incompetent and immaterial.

A. He never made any mention of that person.
Q. Her name was so odious that it was not the topic of conversation with him even?

420 The foregoing question is objected to by Mr. Garnett as incompetent and immaterial.

A. It was very rarely, — ever, mentioned.
Q. From his statement of her conduct I suppose you were led to believe that she was quite a bad woman, were you not?

The foregoing question is objected to by Mr. Garnett as incompetent and immaterial.

A. I was certainly led to believe that she was a very bad woman.
Q. Had you seen much of her before she went to Europe, in Salt Lake City or in other places?

Objected to by Mr. Garnett as incompetent and immaterial.

A. In Salt Lake City I only saw her for a few moments, at the same time I met her husband, and I spoke to her as I did to him. We exchanged a good many calls here, but, of course, as she was a much older person than I was her calls were made upon the elder members of my family, and in that way I saw very little of her.
Q. Her visits were, then, particularly to the other members of your family; am I correct?

Objected to by Mr. Garnett as incompetent and immaterial.

A. She asked for all of the family, I think.
Q. Were you the only member of your family whom she
421 invited to dinner through Major Nickerson?
A. I was not.
Q. Who else of your family dined there?
A. An elder sister.
Q. Give her name, please.
A. Virginia Carter.
Q. You have testified that she visited your house very frequently?

The foregoing question is objected to upon the ground that there has been no such testimony given by the witness.

A. No; I did not say very frequently; I said that she visited our house quite often.
Q. How many times do you think she visited your house?
A. Perhaps a dozen or more times; I cannot remember exactly.
Q. During her visits to your house did she leave an unfavorable impression upon your mind, as bearing out the character given to her by Major Nickerson?

The foregoing question is objected to as incompetent and immaterial.

A. She left the impression that she was a sulky, vindictive woman.
Q. How did you form that impression? State what she said and did.

422 Objected to by Mr. Garnett as incompetent and immaterial

A. I formed the impression from her general conversation and from her comments about people.
Q. Would you all join in comments upon other people when she spoke of them?

Objected to by Mr. Garnett as incompetent and immaterial.

A. We were not.
Q. You were all quiet listeners to what she said, without making any reply either in the affirmative or the negative?

The foregoing question is objected to by Mr. Garnett as incompetent and immaterial.

A. The person- she was commenting upon were all strangers to us, and, of course, we did not have anything to say — them one way or the other.
Q. Are you on friendly terms with Mrs. Nickerson, the complainant?
A. I certainly am not.
Q. When did the change take place in regard to your friendship to her?

The foregoing question is objected to as incompetent and immaterial, and for the further reason that there has been no testimony showing that they ever were friends.

A. When I was told what sort of a woman she was.
Q. That was pending the divorce suit and was told to you by Major Nickerson, was it not?

423 Objected to by Mr. Garnett as incompetent and immaterial.

A. It was.
Q. Up to that time you had not formed any impression about her at all, had you?

Objected to by Mr. Garnett as incompetent and immaterial, and for the further reson that the witness has already testified as to her impression of Mrs. Nickerson received from her visits.

A. Previous to that time I had not thought much about the matter one way or the other.
Q. Do you know it to be a fact that Major Nickerson would not have gone to Rock Enon Springs had it not been that you and your family were there?

Objected to by Mr. Garnett as incompetent and immaterial.

A. I certainly do not know anything of the kind.
Q. Did you all not talk it over before you decided where you were going?

Objected to by Mr. Garnett as incompetent and immaterial.

A. We did not. Major Nickerson had no knowledge of where we were going for the summer.

Q. How did he find out that you were there?

A. I don't know that.

424 Q. Do you mean to be understood as saying that during all the time Major Nickerson was at Rock Enon Springs you did not take a walk with him alone?

The foregoing question is objected to by Mr. Garnett as incompetent and immaterial.

A. I did not.

Q. You are just as certain of that as you are of anything else you have testified to, are you?

A. I am positive of it.

Redirect examination by Mr. GARNETT:

Q. You say that you first heard of this divorce suit in May, 1882, and that you first heard of the divorce being granted in March, 1883. Between May, 1882, and March, 1883, was Major Nickerson in this city, and did you see him between those dates?

A. I did. He called at the house the same as usual.

Q. At the time you received this deed, which was about June 1st, 1884, you had then heard of the proceedings instituted by Mrs. Nickerson to set aside this divorce, had you not?

A. Yes.

LENA DILLER CARTER.

Adjourned subject to agreement.

425 *Testimony of Wm. B. Matthews. Filed Mar.* 8, 1886.

WASHINGTON, D. C., *January 27th*, 1886—4 o'clock p. m.

Met pursuant to notice.

Present on behalf of the complainant, Mr. Johnson; present on behalf of the defendant, Mr. Robinson.

WILLIAM B. MATTHEWS, a witness of lawful age, called by and on behalf of the defendant, being first duly sworn, is examined by Mr. ROBINSON:

Q. Please state your full name and residence.

A. William B. Matthews. I reside in Washington city. I claimed residence in Virginia before I sold my property there, but I have no intention of returning to Virginia just now, so I have changed my residence.

Q. You have no knowledge as to the marriage of the complainant to Major Azor H. Nickerson, the *complainant*, have you?

A. None at all, sir.

Q. Have you any knowledge as to Azor H. Nickerson's owning lands or property in Oregon?

A. I know nothing about that, sir. I have heard—I don't know how I heard it—that he had property in Oregon, but I don't know anything about it.

Q. Have you heard that since the beginning of this suit?

426 A. I think I have.

Q. Did you hear it before?

A. Not that I know of. I heard something about it, but I don't know anything in the world about it myself.

Q. Have you any knowledge of any promise, agreement, understanding between the complainant, Emma C. D. Nickerson, and the defendant, Azor H. Nickerson, relative to any settlement upon her or the conveyance of property to her?

A. None at all.

Q. You know nothing about any antinuptial or post-nuptial marriage settlement or contract or trust?

A. No, sir; I knew Major Nickerson very well, but I have no personal knowledge of this matter at all. He told me she had nothing when he married her. He said she was a poor woman and had no property at all when he married her. I always regarded him as the financial member of the firm.

Q. You knew nothing about his buying or selling any lands in Portland, Oregon, or the amounts for which he sold the same?

A. No, sir; I know nothing of what occurred outside of Washington city.

427 Q. Did you know anything about the purchase of lot No. 2, in square 114, in the city of Washington, being No. 7 Dupont Circle, made by Azor H. Nickerson, or any of the circumstances attending it?

A. Yes, sir; I knew something about that.

Q. Please tell us what you know about that.

A. The first time that I ever had any conversation with him on that subject——

All conversation of the witness with the defendant Nickerson is objected to by Mr. Johnson as inadmissable.

The WITNESS: I will speak from my own knowledge, then. Major Nickerson bought that property from a messenger in his office, a man named Washington. The exact price I cannot give. I was called on to go and look at it and give my judgment as to whether it was worth the price he asked for it. I told him that he was getting — at a reasonable figure and advised him to buy it.

Q. That property was conveyed to James Washington by whom?

A. It was conveyed to me in trust; at that time Major Nickerson expected to be ordered West.

Statements of the witness as to the expectations of Major Nickerson are objected to by Mr. Johnson.

428 Q. Was that the reason that it was conveyed to you in trust?

A. Yes, sir; he was expecting to be ordered West, and he expected that he might be in the West at the same time when he wanted to sell the property, and for the sake of convenience he had

the property conveyed to me so that on a written order from him I might dispose of it, his wife being in Europe, and avoid the necessity for delay.

Q. So that upon a written order or request from him you could convey the property?

A. Yes, sir; he had lost a good deal of money before that time in stocks and this money was invested at my suggestion.

Q. What position did Major Nickerson hold at that time?

A. He was assistant adjutant general at the War Department.

Q. Do you know why it was that he expected to be ordered West?

A. Because I believe he had been here a sufficient length of time, and they change them around. He had been here a number of years and he expected to be ordered back. The rule in the army keeps the men on the frontier for a certain length of time and then they change their position.

429 Q. It was only, then, for the convenience of transferring the property that he requested you to act as trustee, was it?

A. I so understood it. I will state that the money with which the property was bought was, I believe, the result of a sale of stocks. When I first knew him he had all his money in stocks, as I understood. I advised him repeatedly to sell his stocks and to speculate and I advised him to go and invest his money in real estate.

Q. The bill of the complainant charges that Major A. H. Nickerson, yourself, and the defendant, Lena Diller Carter, wrongfully and fraudulently and with the intent and view of carrying out a conspiracy formed between you expended the sum of $8,380 in the purchase of said lot No. 7 Dupont Circle. I would ask you whether any such conspiracy was formed thereto?

A. That allegation is untrue and without the slightest foundation. Moreover, I would state that I, at that time, had never seen Lena Diller Carter nor did I know her. I never saw her until the day of her marriage to know her.

Q. It is charged in the bill that said conspiracy was entered into between Major Nickerson, yourself, and Miss Carter for the purpose of defrauding the complainant, Emma C. D. Nickerson. What have you to say about that?

430 A. It is equally false with the other allegation and without the slightest foundation.

Q. Was there any conspiracy formed between yourself and the others or between them, to your knowledge?

A. No, sir; nor was I ever present at a meeting between the parties at which the matter was talked about or discussed. The purchase was made as an investment. I advised it to save him from what I thought was his impending ruin—stock gambling—and I advised it as a friend, because I was very fond of him. He had been kind to me and I was very fond of him.

Q. Have you ever done anything for the purpose of defrauding the complainant or injuring her in any way or to deprive her of any property?

A. No, sir; I never saw her in my life. I don't know that I would know her if I were to see her to-day.

Q. It is also charged that the execution of this deed to you, as trustee, was for the purpose of defrauding the child of the complainant. Is there any foundation for that?

A. It is untrue. There is less foundation for that than for the other two allegations, because I always heard Major speak in the most affectionate terms of his child. He went so far on one occasion as to take out a policy in a life insurance company for the benefit of his child, which he was forced to give up in consequence of
431 these proceedings against him and his lack of means. I have heard him say repeatedly that he had sent money to his child.

Q. I believe you stated that, so far as you knew, this property, No. 7 Dupont Circle, was purchased with money which he raised by the sale of stock into which he had previously put his money?

A. Yes, sir; at least, the greater portion of it.

Q. Was he a large dealer in stocks?

A. I never knew of any specific investment he made or of any specific loss, but I heard him say from time to time that he had lost money.

Q. Do you know anything about his having owned another lot in this city or his having owned any equitable interest in the city?

The foregoing question is objected to as incompetent and inadmissable.

A. Yes, sir.

Q. What was that lot?

A. I don't know the number of the lot; it was 1457 Rhode Island avenue. That property was purchased by John G. Mason, as commissioner, under a decree of the circuit court of Fredericksburg, with funds obtained from the sale of certain real estate under the last will and testament of Carolinus Turner, left to his wife in trust
432 and for the benefit of my wife.

The foregoing answer is objected to by Mr. Johnson as incompetent and immaterial, the record being the best evidence.

Q. When that property was purchased by him was there any deed of trust or encumbrance upon it?

The foregoing question is objected to by Mr. Johnson on the ground that the record is the best evidence.

A. Yes, sir; it was subject to a deed of trust which we assumed.

Q. Then that deed of trust had not been paid off when he sold it?

A. The last note was paid off only about six months ago.

Q. It was subject to a deed of trust and he owned only the equity of redemption?

A. Yes, sir; I don't think his equity of redemption amounted to more than $1,600 or $2,000. We paid off the last notes and we have gotten a release from Fitch, Fox and Brown. We have not recorded it yet, as it was only obtained recently.

Q. Is this a release of the deed of trust which was on the property at the time Nickerson bought it?

A. Yes, sir; and subject to which I bought it from him.

Q. The amount received by Nickerson from the sale of that property was how much?

433 The foregoing question is objected to by Mr. Johnson as inadmissable.

A. If my memory is correct, I think it is about $1,600.

Q. Can you tell the date when he sold that property?

A. I cannot; the papers on record will show.

Q. Give about the date.

All the questions are objected to by Mr. Johnson for the reason that they cut no figure in the bill and that this is simply new matter set up in the answer.

A. I think it was in the early part of 1882. It was a long time before this other property was purchased—a year or two, as I remember. It was before I knew he had any other money. The circumstance- under which that property was purchased are these: I remarked to him one day that there was some property left my wife and that with the proceeds we wanted to buy property in Washington. He said, I have some property which I would like to sell you. It is just about the amount you have to invest and it is subject to a deed of trust. I have never offered it before, but if we can come to terms I would like to have you buy it. He took me up in his buggy to look at it. I consulted with Fisher and some other real-estate men in whom I had confidence. I then consulted

434 Mr. Mason. My wife's mother came on to look at the property and we decided that it was a good investment and the purchase was made.

All of the foregoing answer is objected to by Mr. Johnson because it can in no sense be termed evidence in this cause.

Q. It is charged in the bill that the defendant, Azor H. Nickerson, Lena Diller Carter, and yourself formed a conspiracy and entered into the same for the purpose of defrauding the complainant and particularly to defraud her of her right, title, and interest in certain property or of the proceeds of the sale thereof; what have you to say as to these allegations?

A. They are all false. He never had anything but the equity of redemption to the property that I purchased.

Q. Did he ever obtain any legal title to the house No. 7 Dupont circle?

A. No; he had only an equitable title.

Q. Had the complainant any interest in any of that property?

A. None at all; and even if she had it could have cut no figure in the case, because any rights that she may have had she conveyed when she signed the deed.

The legal conclusions of the witness are objected to by Mr. Johnson.

435 The Witness: I refuse- to allow the money to be paid to Major Nickerson until the deed was executed. A deed was

prepared and sent to Europe somewhere and the money was withheld by me until the deed came back duly acknowledged.

Q. When did you first meet the defendant, Lena Diller Carter?

A. On the morning of her marriage.

Q. Do you remember when that was?

A. No, sir; I have a poor recollection of dates.

Q. Did you in any way encourage, suggest, or advise the departure of the complainant for Europe?

A. She had been in Europe for several years before I ever heard of Major Nickerson or saw him and before I ever heard of either of them.

Q. Her going away was not encouraged, advised, or suggested by yourself, was it?

A. I had never seen Major Nickerson at that time and I had never seen or heard of her.

Q. Where was the complainant in 1881?

A. In Europe, I presume. I did not even know that he was a married man until after the negotiations about the house were begun.

Q. It is charged in the bill that the defendant, A. H. Nickerson, went to the city of Philadelphia, Pennsylvania, for the pur-
436 pose of obtaining a pretended residence in said city, with the knowledge and consent of yourself and at your instigation. I will ask you whether you ever did anything to cause him to go anywhere for the purpose of obtaining a pretended residence.

A. That is untrue. Major Nickerson was formerly from Pennsylvania. I never questioned where he was from, as I was not interested in the matter. I simply knew him as an army officer. He told me his home was in Philadelphia.

Q. The allegation is made in the bill that Major Nickerson went to Philadelphia, in the State of Pennsylvania, for the purpose of acquiring a pretended residence in said city, with the knowledge and consent and at the instigation of yourself?

A. I don't know what he went there for, but it was not done at my instigation. I did not suppose it required my consent for him to go to any portion of the United States. He was of age and had a right to go where he pleased, I presume. I don't know where he was born or where he was raised or anything about his early history, except what I heard from him.

Q. It is charged in the bill that Major Nickerson filed a bill to obtain a divorce, and obtained a divorce in the city of Phila-
437 delphia, in the State of Pennsylvania, for the purpose of carrying out a conspiracy with Miss Carter and yourself to defraud the complainant?

A. That is untrue. I have never been a party to any conspiracy of any kind with any person. Major Nickerson told me that certain reasons existed which, he was informed, were grounds for divorce, and he consulted with me as to bringing a suit for divorce. I then for the first time asked him where he lived and where he claimed his residence to be. He informed me that it was Philadelphia, Pennsylvania. I then informed him that — he contemplated

taking that step he would have to bring suit there, and my advice was for him to consult some good counsel in that city. He adopted my suggestions with reference to the matter and employed Messrs. Reed and Pettit, a prominent law firm in the city of Philadelphia, and they procured for him a divorce of *a vinculo*.

Q. You had nothing to do with his obtaining that divorce?

A. I simply advised him to employ these men.

Q. You had nothing more to do with it than you have stated?

A. No, sir. He employed me as counsel in the first place.

438 I told him I could not practice in Philadelphia, and that the suit would have to be brought there. I made inquiry as to lawyers of good standing in Philadelphia and ascertained that Reed and Pettit stood about as high as any members of the bar, and I advised him to employ them.

All the foregoing answers are objected to by Mr. Johnson as incompetent and immaterial.

Q. It is charged in the bill that he obtained said divorce by means of fraud and perjury and through the conspiracy with Miss Carter and yourself; is there any foundation for these charges, as far as you are concerned?

A. No; as far as I am concerned, I don't know whether he swore to the truth or not.

Q. You had nothing to do with any fraud or perjury?

A. Nothing at all; I always found Major Nickerson in all my transactions to be a man of strict honor and integrity.

The foregoing answer is objected to by Mr. Johnson as being wholly inadmissable.

Q. Did you know anything about his having insured his life shortly before said decree was passed, and, if so, for whose benefit?

A. I answered that question a while ago; he insured it for the benefit of his daughter.

Q. Was that shortly before the decree was obtained?

439 A. Yes, sir; that was after he had been put on the retired list and a very short time before or perhaps after these proceedings were instituted.

Q. You have already stated that that suit was not instigated through any conspiracy with yourself; have you any knowledge of its having been instigated through any conspiracy with the defendant, Lena Diller Carter?

A. I don't know, but I don't believe she knew anything about it.

Q. There was no attempt on your part, by means of said suit, to defraud the complainant or her child?

A. None whatever.

Q. Have you any knowledge that any trust funds were used by Major Nickerson in the purchase of house No. 7 Dupont Circle, as is charged in the bill?

A. None whatever. As I said before, the property was purchased with the proceeds from the sale of stocks, in which he had been operating for some time.

Q. It is charged in the bill that Major Nickerson and Miss Carter were married on the 2nd day of April, 1883; was that the day that you first met her?

A. If that was the day she was married, it was; I first met her on the day she was married.

Q. You do not remember the date?

440 A. No; I met her in the city of Baltimore.

Q. By whom were you introduced to her?

A. By Major Nickerson.

Q. Was there any conspiracy relative to said marriage between Major Nickerson, Miss Carter, and yourself, in order to defraud the complainant and deprive her of any property, or to aid in doing so?

A. None whatever.

Q. Or in any way to affect any property in which she might have an interest?

A. None whatever.

Q. Was there any conspiracy between you and your codefendants relative to said marriage?

A. None whatever. I never was a party to a conspiracy between any of the parties to this whole transaction.

Q. In accepting the trust when the property No. 7 Dupont Circle was conveyed to you was it any intent on your part to defraud the complainant?

The foregoing question is objected to by Mr. Johnson as leading.

A. None whatever. I accepted the trust at his request in order to facilitate him in the disposal of the property after his departure from Washington.

Q. Was that the only reason?

A. Yes, sir.

Q. Had you ever heard of any trust fund or marriage settlement or separate estate belonging to complainant?

441 A. No; I never heard of any, and I don't believe there ever was any.

The statement of the witness as to his opinion is objected to by Mr. Johnson.

Q. The first you ever heard of it was when the bill was filed?

The foregoing question is objected to as leading.

A. The first I ever heard of that was when the bill was filed to set aside the decree of divorce. That was the first time I ever heard that she had any claims.

Q. You have no knowledge that any of the transactions were of a fraudulent character, had you?

A. None whatever, and I don't think any of them were.

Q. Are they, so far as you are concerned?

A. So far as I am concerned they are not.

Q. It is charged in the bill that all of Nickerson's right and title to the said lot was conveyed by you to Miss Carter?

A. At his request in writing and in pursuance of the provision in the deed to that effect that property was to be conveyed by me on his written request. He thought at the time that he might be out of the city and want a conveyance made of the property.

What the witness thought is objected to by Mr Johnson as
442 not being evidence in this cause.

Q. Was that conveyance made by you in pursuance of any conspiracy with him?

A. None at all. It was in pursuance of his request in writing. The property was purchased with his money and conveyed to me at his request, and at his request it was conveyed to Lena Diller Carter or Lena Diller Nickerson.

Q. When you say in pursuance to his request you mean in pursuance of the request made in the trust, as expressed in the deed?

A. Yes, sir.

Q. You conveyed it, then, merely as trustee?

A. Yes, sir; having accepted the trust, it became my duty to carry out the provisions of it.

Q. And that was done in perfect good faith on your part, was it not?

A. Certainly, it was.

Q. And without any intent to defraud the complainant?

A. The complainant was never taken into consideration by me. I simply acted in my capacity as trustee, without any reference to any one.

Q. It was not in pursuance of any conspiracy with you or with knowledge of any conspiracy against the complainant?

The foregoing question is objected to as leading.

443 A. There was no conspiracy with me.

Q. Was it done with knowledge of any conspiracy against the complainant or any one else?

A. None whatever.

Q. Do you know anything about the making of a bill of sale of certain personal property in the city of Washington to Lena Diller Carter?

A. Yes, sir.

Q. Was there any conspiracy with you relative to that?

A. None whatever. I do not even remember what the consideration was. I think I prepared the bill of sale. It was two or three days before he left Washington.

Q. It is charged in the bill that there were certain fraudulent acts practiced by Major Nickerson and by the defendant, Lena Diller Carter, and that they entered into a conspiracy in order to deprive the complainant of her property. Have you anything to say about that?

A. I don't know what occurred between them; nothing ever occurred that I heard. I never saw them together until after they were married, or just as they were going to be married, and on the morning of the marriage.

Q. So far as these charges are made against you, is there any truth in them?

444 A. So far as I am concerned, they are utterly false and without the least shadow of reason.

Q. It is charged in the bill of complaint that there is or has been a conspiracy between A. H. Nickerson, Lena Diller Carter, and yourself to get the complainant to go abroad and out of the reach of knowledge of what was going on here. I will ask you if there is any truth in those charges, so far as you are concerned?

A. It is utterly false, because, as I have remarked several times before, I had never seen Major Nickerson, Miss Carter, or Mrs. Nickerson prior to the time mentioned in my testimony.

Q. You didn't know anything about her going to Europe?

A. Nothing whatever. I only knew from hearsay and from Nickerson's statements, and from the fact that she executed a deed in Europe, that she was there at all. I did not even know, except from his statement, that such a person ever existed.

Q. That was long before she had gone to Europe, was it not?

A. She left for Europe more than a year before I reached Washington.

Q. Did you ever, in any way, communicate with the defendant, Lena Diller Carter, prior to the date of her marriage with Nickerson?

A. I never communicated with her at all.

445 Q. It is charged in the bill that the said Azor H. Nickerson was to procure a divorce from the complainant with the knowledge and connivance of the defendants, Lena Diller Carter and yourself; what have you to say to that?

A. It is false, so far as I am concerned. I gave him such advice as I thought he ought to have with reference to employing counsel to obtain a divorce. I also asked him, before any proceedings were had, what were his grounds for divorce, so as to form some idea whether the proceedings would amount to anything if instituted. I was thoroughly satisfied from what he told me that he had abundant grounds for divorce, other than those set forth in his bill, even.

Q. It is further charged in the bill that the defendant, A. H. Nickerson, disposed of property in Oregon, and of other property in which the complainant had an interest, and that some of the proceeds thereof were placed in your hands so as to avoid the rights which the complainant had in said property.

A. That is untrue; as I said before, the money that he invested in the property on Dupont Circle was money that he informed me

446 was realized from the sale of stock. I don't know whether it was or not, nor where it came from. It was a matter about which I had no concern and as to which I made no investigation.

Q. Do you or do you not know that the complainant had any interest in any property in Portland, Oregon, or anywhere else?

A. No, sir; I do not.

Q. It is further charged that you entered into a conspiracy looking to and with a view to the marriage of Lena Diller Carter and

Major Nickerson in order to deprive the complainant of her interests in property; I will ask you what you have to say about that?

A. That is untrue, like all the rest of the allegations that I have heard, so far as I am concerned.

Q. It is further charged that you entered into a conspiracy with A. H. Nickerson and Lena Diller Carter to convey or cause to be conveyed all of his property to the said Lena Diller Carter. I would ask you what you have to say about that?

A. That is untrue. I conveyed the property to her at his request. At the time that deed was made to me I don't suppose he had any idea in the world of ever conveying the property to Lena Diller Carter.

Q. It was not done in pursuance of any conspiracy, was it?

A. Not at all.

447 Q. Was that conveyance to her the result of unforeseen circumstances?

The foregoing question is objected to by Mr. Johnson as inadmissible.

A. I don't know.

Q. I mean so far as you are concerned?

A. So far as I am concerned, I knew nothing about it.

Q. You had not anticipated anything of the kind?

A. Nothing of the kind.

Adjourned until Friday, January 29, at 4 o'clock p. m.

WASHINGTON, D. C., *January* 29, 1886.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Johnson; present on behalf of the defendant, Mr. Robinson.

Cross-examination by Mr. JOHNSON:

Q. When did you first make the acquaintance of Major Nickerson?

A. It was about three months after the inauguration of President Garfield.

Q. Under what circumstances did you make his acquaintance?

A. I was appointed to a clerkship in the War Department and was ordered to report to him. He was in charge of the branch to which I was assigned.

448 Q. In what part of the building was his office, and in what part of the building was your office?

A. My office was in a different building from his; he was in the old War Department, and I was immediately across the street, in another building.

Q. Up to the time of your appointment you never knew him?

A. I had never seen nor heard of him.

Q. When did you leave the Department?

A. I was there two years and a little upwards, and I resigned of my own accord to commence practicing law.

Q. In what business are you now engaged?

A. I am now the assistant chief of the pre-emption division, in the General Land Office.

Q. How long had Major Nickerson left the War Department before you resigned?

A. A few months, sir; I don't know how many.

Q. Did you see him often during office hours in the Department?

A. No, sir; I seldom saw him; never unless I was sent for.

Q. In purchasing house No. 7 Dupont Circle was the title examined before the purchase was made; and, if so, by whom?

A. I think that when he discussed the question as to buy-
449 ing the property I advised him to have the title examined. He asked me who was the best person to make the examination, and I suggested Ashford.

Q. Did you know of your own knowledge, or did Major Nickerson tell you, on what day Mrs. Nickerson, the complainant in this suit, sailed for Europe?

A. He did not, sir; nor did I know.

Q. When did he first tell you, as near as you can recollect, that she was in Europe?

A. That involves a little explanation. I will state briefly what, perhaps, may save considerable trouble and unnecessary consumption of time. Major Nickerson sent for me to come over to his office, and, as he was in charge of the whole Department, of course I went. On several occasions when I went over there to see him I was struck by his absent-mindedness. Very often, on going there and waiting awhile, he would say nothing, or, perhaps, he would simply address me when I went in and make a few remarks, and then say nothing further. Finally I would say, Well, is there anything further, Major, that you want to see me about? He would say oh, no, and I would go away. Finally, on one occasion, he sent for me, and the same thing was repeated. I said to him, I have been over here very often to see you when you have sent for me, and you will pardon
450 me for saying so, but I can't see what you want with me. You seem to be in trouble of some kind. Well, he said, to tell you the truth I am in trouble and I have been for some time. I then, very naturally, asked him what his trouble was. He replied, What do you think it is? Well, I said, I don't know; is it about any woman? His reply was this: I will tell you now what I never told any other man and what I have been wanting for a long time to tell you, but I have been waiting to find out whether you are a man that could be trusted with a secret such as I am about to impart to you. Then he went on and told me that on one occasion when he was an officer in command of one of the departments in the West, stationed at a certain barracks there, there was an officer who had formed quite an attachment for his wife and paid her considerable attention, rather marked attention. One night he was out and returned home very late. He went into his house and found the front parlor brilliantly illluminated and the lights burning and the folding doors between that room and the other closed. He opened these doors and, as he did so, this officer jumped up from

beside his wife on the sofa where they had been sitting, and in that room there was no light. He started to go upstairs and this
451 man went out of the house. He told me that from — day until the time of this conversation he had never occupied the same apartments with his wife, and that he had always suspected her fidelity; that they had come to Washington to live and had lived in the same house, but not as man and wife, and that finally his wife had deserted him. He said that they were in society here, and that he offered no remonstrance with his wife on account of his daughter and on account of the notoriety it would bring him into, as he was a prominent army officer. He said he went as far as New York with her in order to prevent the matter from getting into the papers. She had told him that she intended to leave him and she really left without any consent of his. She said she had made up her mind to go and he offered no resistance. She told him that she had left him for good. He was a deserted man and a very unhappy man.

Q. State, as near as you can, when Major Nickerson first told you that the complainant was in Europe.

A. On the day that I was sent for.

Q. Will you give the date?

A. I cannot give the date.

Q. Approximate it.

452 A. It was about four months after I first met him; I think it was some time during the year 1880, after Garfield was inaugurated.

Q. About four months after Mr. Garfield was inaugurated you had the above conversation with him?

A. Yes, sir.

Q. Do you know when he filed his libel for divorce in Philadelphia?

A. No, sir; the papers will show.

Q. Have you any recollection as to the time?

A. No, sir; I have a poor memory for dates.

Q. Can you tell when the decree of divorce was obtained?

A. In the usual time after the bill was filed, according to the regular legal process.

Q. Do you know what that time was in Philadelphia?

A. No, sir; I do not.

Q. You don't know, then, as to the dates when the petition was filed nor when the decree was obtained?

A. No, sir; nor when Mrs. Nickerson came back, nor when the divorce was set aside.

Q. Do you know on what grounds the decree of divorce was set aside?

A. I do not, sir; I never read the bill, nor any of the pleadings in the case.

453 Q. Do you know how long it was after the divorce was granted that Major Nickerson married Miss Carter?

A. I don't know how long it was, sir, but it was not long.

Q. You have said that you saw them in Baltimore on the day of the marriage?

A. Yes, sir.
Q. Where did you meet them?
A. At the depot.
Q. At whose request did you meet them there?
A. At the request of Major Nickerson.
Q. For what purpose?
A. To witness the marriage as a friend.
Q. When did he request you to go to Baltimore for the purpose of witnessing the marriage?
A. He told me the day before. I very often go to Baltimore. I met him at the train, and rode up in the hack to the rector's residence, witnessed the marriage, and came back with them. I separated from them at the Pennsylvania depot.
Q. When did you execute the deed for the house, No. 7 Dupont Circle, to Miss Carter?
A. The day before he left the city.
Q. Do you know when that was?
A. No, sir; it was the day after the deed was written; the deed will show it.
Q. To whom did you deliver the deed?
454 A. I delivered it to the grantee.
Q. To Miss Carter?
A. Yes, sir.
Q. Where did you see her?
A. I don't remember.
Q. Did you go to her house and deliver it to her?
A. I don't remember; I may have done so. After he left I was frequently at her house and she was frequently at my office.
Q. You are not positive, then, whether you delivered the deed to her before he left or after he left?
A. No, sir; but I think it was after he left. I think I delivered it a day or two after he left.
Q. When did you hear Major Nickerson say that he had sent money to his child?
A. At the time he informed me about his troubles. I asked him where his wife had gone, and he said that she had sailed from New York for Europe, and that she was then in Germany, where she was at the time the deed was executed conveying the property to Mrs. Turner as trustee. I asked him what part of Europe, and he said in Germany, and that he had been in the habit of sending money to her for the benefit of his daughter, and that inasmuch as she had no means of support he sent his daughter a liberal amount.
455 He said that he would have made some objections to his daughter being with the wife, but for her own sake, as she knew nothing about any trouble between them, it was his purpose never to let her know. He said that he did not question her love for his child and that he gave her a liberal allowance.
Q. You did not know, then, that at time he was remitting money, in cash and by draft, solely and directly to his wife?
A. No, sir; I never saw him send a draft in my life.
Q. You say that you refused to allow the check to be paid to

Major Nickerson until the deed was returned to Europe that was sent there to be signed by Mrs. Nickerson; to what check did you refer, and what was the amount of it, and upon what bank was it payable?

A. It was a check drawn by Mrs. Susan A. Turner, trustee for Mrs. William B. Matthews. The check was drawn on the banking house of Conway and Garnet, of Fredericksburg, and it was for the cash payment that I made Major Nickerson on the property No. 1457 Rhode Island avenue.

Q. Had that check any reference to the purchase of house No. 7 Dupont Circle?

456 A. No, sir; that happened a long time before this divorce, and a long time before I saw Miss Carter, and before the purchase of the property on Dupont Circle was ever thought of.

Q. I understood you to say in chief that you did not know Major Nickerson was married until the negotiations took place about a house. Did you mean the house No. 7 Dupont Circle or the other property?

A. I mean the house on Rhode Island avenue.

Q. At the time of the purchase of the house on Rhode Island avenue you learned that he had a wife?

A. Yes, sir. He may have told me so before.

Q. And it was not at the conversation that you had with him in the Department that you learned for the first time that he had a wife?

A. No, sir. The deeds themselves show that one was made a long time before the other. I do not charge my memory with these things.

Q. You have stated that the reason Major Nickerson placed the property No. 7 Dupont Circle in your name in trust was because he expected to go West?

A. Yes, sir.

Q. Have you any information about that except what he told you?

A. No, sir.

Q. Did he go West?

457 A. No, sir; he made application to be put on the retired list, which he would not have done but for the fact that he would have been required to go West. That brought it about.

Q. Do you mean to say that if they had not sent him West he would not have asked to be put on the retired list?

A. It is just the reverse. I mean to say that but for the fact of his having been ordered West he would not have made application to be placed on the retired list.

Q. Then the fact that he was ordered West caused him to make application to be placed on the retired list?

A. Yes, sir; he did so because he thought his health was too delicate to stand the hardships.

Q. How do you reconcile the fact, then, that Major Nickerson caused the property No. 7 Dupont Circle to be conveyed to you in

trust because he expected to go West, and when he was ordered to go West he applied to be placed on the retired list?

A. It is easily done, sir. That was before he had made up his mind to put in an application to be retired. He thought at first, when he was ordered there, that he would have to go and that he would go because his pay was larger. He was somewhat in-
458 clined at that time to go, but after awhile he changed his mind. I don't know what caused the change.

Q. Have you ever met the complainant?

A. Never, in my life, sir; I would not know her if I was to see her at this minute.

Q. Do you know anything about her at all, of your own personal knowledge?

A. Nothing at all, sir; I don't know any of her friends either.

Q. Were you a witness for Major Nickerson in the divorce suit in Philadelphia?

A. I think my deposition was taken, but it was not material.

Q. Was it taken here or in Philadelphia?

A. I think it was taken here, but I am not certain. I know that all I testified to was hearsay; it was what I had heard from him; I knew nothing of my own knowledge; my deposition had no weight; its principal object was as to *its* character, I expect; I had the highest opinion of him as a man; I have never known a man with whom I had more pleasant relations.

Q. Have you seen or heard from Major Nickerson within the last thirty days?

A. No, sir; not within the last year.

Q. You state in your examination-in-chief that when this property, No. 7 Dupont Circle, was purchased, Major Nickerson had
459 all his money invested in stock; state what kind of stocks and how much money he had invested in them at that time.

A. I have not the slightest idea, sir; I never saw any of his stocks; I never saw his bank account, and don't know where he kept his account nor where his stocks were or anything about it except what I heard from him.

Q. Then when you stated that all his money was invested in stocks you meant that you had simply heard it from him?

A. Yes, sir.

Q. And you knew nothing about it yourself?

A. Nothing at all, sir.

Q. Did he speak to you frequently between June 1, 1881, and June 2, 1883, of his various speculations?

A. He frequently spoke to me of losses; he never said where they occurred; he simply spoke of losses having occurred in stocks.

Q. Did he state the character of his speculations?

A. He did not; I think, though, that he dealt in some matters through Bateman & Co.

Q. Did he also deal through Middleton & Co.?

A. Perhaps he did.

Q. Do you know through what bank the check passed in payment for the property No. 7 Dupont Circle?

A. I do not know.

460 Q. Did you not see it?

A. I may have seen it, but I don't remember; I don't think I did see it.

Q. Do you know who were the members of the various pools and syndicates engaged in stock speculations with Major Nickerson?

A. No, sir; I don't know; I think he was engaged in some matters with General Swaim; they were very often together; I am not certain about that.

Q. Do you know the amount of Major Nickerson's investments and how large the gain or loss by any or all of these speculations?

A. I never heard him make any statement in my life as to the amount of money lost or when or where it was invested, or anything of the kind; the only thing I ever heard him say was that he was an unfortunate speculator, but that he liked the excitement and he had lost pretty heavily. I advised him to withdraw from speculations and invest his money in real estate. I told him if I had money I would put it into real estate in Washington; that property was booming here, and that he might buy anywhere, and that in a few years, in my estimation, he would make a good thing of it.

461 Q. Do you know where he received his money with which he speculated in stocks?

A. I have no idea; I presume he made it.

Q. Did he ever tell you where he got it?

A. No, sir; but from the manner in which he talked I presumed it was his own money; I supposed that he saved it from his salary; he had a good salary, and could have saved several thousand dollars.

Q. What was his salary a year?

A. About $4,500.00, besides allowance for servants and a couple of horses, and all that sort of thing, which he never spent; he took it in cash; I suppose he had an income of $5,000.00 a year, and his expenses were not over $2,500.00.

Q. All the testimony that you have given touching the stock speculations of Major Nickerson and the amount he had invested was derived from what he told you, and yet he never told you from what source he received the money nor how much he had invested.

A. No, sir; for I never invited confidence from him except what he gave me.

Q. Mr. Matthews, did you draw this answer yourself?

A. No, sir; I read it and signed it; I think I drew a rough answer in the first place and it was put in proper form; the phrase-

462 ology is somewhat different here from what it is in my own State, and I think I submitted an informal answer and it was transcribed and submitted to me and I read it and swore to it.

Redirect examination by Mr. ROBINSON:

Q. I think you stated that you were not positive as to the time of the delivery of the deed to Mrs. Carter; whether or not it was on the evening Major Nickerson left?

A. I am not; it may have been one time or the other; I don't know which; it may have been the day it was executed, so far as I know.

Q. You said something about Major Nickerson being in delicate health and that was the reason why he asked to be put on the retired list; did you know anything about his being subject to sudden attacks?

A. Yes; he had them constantly, and he had very severe attacks.

Q. Can you give us an idea as to the character of these attacks?

A. It was caused by some heart trouble. His heart had been pierced by a minnie ball—pierced in more than one place—and there was a depression right over his heart that you could almost
463 get your hand into, and that was the cause of his trouble. He suffered from difficulty in breathing, &c. These attacks were very dangerous and alarming, and his death was likely to occur at any time, as his physicians informed him.

Q. Was that the state of his health from the time you first knew him?

A. Yes, sir.

Recross by Mr. JOHNSTON:

Q. You never saw Major Nickerson anywhere outside of the Department, did you?

A. Yes, sir; I have met him on the street.

Q. You never met him at any house?

A. No; I had a supper with him one night, I think, at Welcker's, perhaps.

Q. Do you know of his having one of these attacks between August, 1880, and January, 1882, while on a visit to Mrs. Carter's house, and that he sent for his servant man John?

A. I went there on one occasion—I think it was between these dates—when he was attacked in that way.

Q. At Mrs. Carter's?

A. Yes, sir; upstairs, in the third story. I went there at one time when he had such an attack and John came for him.

Q. Did you hear any conversation between John and Major Nickerson?

464 A. No, sir; none at all.

By Mr. ROBINSON:

Q. These attacks came on very suddenly, did they not?

A. Instantaneously.

Q. He would recover from them quickly, would he not?

A. Yes, sir; I was surprised at the rapidity with which he would recover.

By Mr. JOHNSTON:

Q. Did he use a great deal of opium?

A. I don't know whether he used it at all. He used to sit up nearly every night.

WM. B. MATTHEWS.

Adjourned subject to agreement.

Met pursuant to agreement.

Present, on behalf of the complainant, Mr. Johnson; present, on behalf of the defendant, Mr. Robinson.

Counsel for the defendant offers in evidence a deed of trust from Alfred C. Girard *et ux.* to James E. Fitch, recorded in liber No. 916, folio 189, *et seq.*, one of the land records for the District of Columbia.

465 A certified copy of said deed is hereto attached and marked Exhibit W. H. S. No. 1.

Counsel for the defendant offers in evidence a deed from Alfred C. Girard *et ux.* to Azor H. Nickerson. Said deed is recorded in liber No. 941, folio 219, *et seq.*, one of the land records for the District of Columbia.

A certified copy of said deed is hereto attached and marked Exhibit W. H. S. No. 2.

Counsel for the defendant offers in evidence a deed from A. H. Nickerson *et ux.* to Susan A. Turner. Said deed is recorded in liber No. 989, folio 487, *et seq.*, one of the land records for the District of Columbia.

A certified copy of said deed is hereto attached and marked Exhibit W. H. S. No. 3.

The introduction of all the above-mentioned deeds in evidence is objected to by counsel for the complainant on the ground that they are incompetent and immaterial.

Counsel for the defendant offers in evidence a stipulation of counsel as to the admission in evidence of the *status* statute of frauds in Oregon. Said stipulation is hereto attached and marked Exhibit W. H. S. No. 4.

It is in the words and figures following, to wit:

466 EXHIBIT W. H. S. No. 1.

First. Alfred G. Girard *et ux.* to James E. Fitch *et al.* Recorded June 23, 1879, 1.40 p. m., Liber No. 916, folio 189, *et seq.*

This indenture, made this sixth day of March, in the year of our Lord one thousand eight hundred and seventy-nine, between Alfred C. Girard, of the United States Army, and Annie R. Girard, his wife, of the first part, and James E. Fitch and Robert C. Fox, of Washington city, District of Columbia, trustees, of the second part.

Whereas the said Alfred C. Girard, being justly indebted unto Matthew Bryan, of Washington city, District of Columbia, in the full sum of three thousand dollars ($3,000), being for the deferred payments in the purchase of the piece or parcel of land hereinafter described, for which he had made, signed, and delivered to the said Matthew Bryan his six certain promissory notes, of even date with these presents, each for the sum of five hundred dollars ($500), and payable, respectively, in one (1), two (2), three (3), four (4), five (5), and six (6) years after date to the order of said Matthew Bryan, with

interest until paid, at the rate of eight (8) per cent. annum,
467 payable semi-annually; and whereas the said parties of the first part, being desirous to secure the full and prompt payment of said notes, together, with the several installments of interest thereon, as they, respectively, become due and payable:

Now, therefore, this indenture witnesseth: That the said parties of the first part, for and in consideration of the premises aforesaid, and, further, the sum of one dollar in lawful money of the United States to them in hand paid by the said parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said parties of the second part, their heirs and assigns, and the survivor of them, his heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as lot "A" (see Liber R. W., fol. 44) of E. A. Woodward's subdivision of lot numbered thirty-eight (38), in square numbered two hundred and ten (210),
in George W. Riggs' subdivision of said square, as the same
468 is recorded in the office of the surveyor of the District of Columbia, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity or ortherwise however, of the said parties of the first part of, in, to, or out of the said described real estate and premises:

To have and to hold the said described real estate and premises and appurtenances unto and to the use of the said parties of the second part, their heirs and assigns, and the survivor of them, his *his* heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared—that is, in trust to permit the said parties of the first part, their heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said notes or interest thereon, or any proper cost, charge, commission, half commission, or expense in and about the same. And, upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses, at any time before the
469 sale hereinafter provided for, to release and reconvey the said described premises unto the said Alfred C. Girard, his heirs or assigns, at his or their cost, and upon the further trust that upon default being made in the payment of the said notes or either of them, or any installment of interest thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said described real estate and premises at public auction, upon such terms and conditions and at such time and place and after such previous public advertisement as the said parties of the second part, their heirs, or the trustee acting in the execution of this trust, shall deem advanta-

geous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and of the proceeds of the said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and,
470 lastly, to pay the remainder, if any, to the said Alfred C. Girard, his executors, administrators, or assigns.

And the said parties of the first part do hereby agree, at their own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to pay all taxes and assessments on said premises when due and to keep the said improvements insured against fire in the name and to the satisfaction of said parties of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to so pay said taxes and assessments or to so insure, any party secured hereby may pay said taxes and assessments or may have said improvements insured, and the expense thereof shall be charged — hereby secured and bear like interest as the matter secured; and it is expressly provided that if said property shall be advertised for sale under the provisions of this deed and not sold, then the said trustee shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured, and the same is hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

471 ALFRED C. GIRARD. [SEAL.]
MRS. ANNIE R. GIRARD. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. GIBSON,
CHAS. G. LYMAN.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, G. M. Miles, a notary public in and for said county, in said Territory, do hereby certify that Alfred C. Girard, of the United States Army, and Annie R. Girard, his wife, parties to a certain deed bearing date on the sixth day of March, A. D. 1879, and hereto annexed, personally appeared before me, in said county, the said Alfred C. Girard and Annie R. Girard, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Annie R. Girard, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she

had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and my notary seal this first day of April, A. D. 1879.

[NOTARIAL SEAL.] G. M. MILES,
Notary Public.

472 TERRITORY OF MONTANA, } ss:
County of Custer, }

I hereby certify that G. M. Miles is a regularly appointed and qualified notary public in and for the Territory and county aforesaid.

A. CAUMCHAD,
Probate Judge & ex Officio Clerk.

TERRITORY OF MONTANA, } ss:
County of Custer, }

I, A. Caumchad, probate judge and *ex officio* clerk Custer county, Montana Territory, do hereby certify that G. M. Miles, whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and therein written, was at the time of taking such proof and acknowledgement a notary public in and for the county of Custer, Territory of Montana, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof of acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the Territory of Montana.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 11th day of June, 1879.

[COURT SEAL.] A. CAUMCHAD,
Probate Judge & ex Officio Clerk.

473 EXHIBIT W. H. S. No. 2.

Deed. Alfred C. Girard *et ux.* to Azor H. Nickerson. Recorded May 7th, 1880, 11.20 a. m., Liber No. 941, folio 219, *et seq.*

This indenture, made this seventh day of April, in the year of our Lord one thousand eight hundred and eighty, between Alfred C. Girard, of the United States Army, and Annie R. Girard, his wife, of the first part, and Azor H. Nickerson, of the United States Army, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of forty-one hundred & fifty ($4,150) dollars, current money of the United States, to them in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, have granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto and to the use of the said party of the second part, his

heirs and assigns, all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as lot "A" (see Liber "R. W.," fol. 44) of E. A. Woodward's subdivision of lot numbered thirty-eight
474 (38), in square numbered two hundred and ten (210), in George W. Riggs' subdivision of said square, as the same is recorded in the office of the surveyor of the District of Columbia, subject, however, to the payment of 5 notes of $500 each, dated March 6th, 1879, payable, respectively, in 2, 3, 4, 5, & 6 years after date, with interest at 8 per cent. per annum, and secured by deed of trust, duly recorded in Liber No. 916, folio 189, *et seq.*, one of the land records for the District of Columbia, the said indebtedness forming a part of the consideration heretofore named and being assumed by the party of the second part, in evidence of which he hath set his hand to these presents, together with the rights, easements, privileges, and appurtenances to the same belonging or in anywise thereto appertaining:

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said party of the second part, his heirs and assigns. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do hereby covenant with said party of the second part, his heirs and assigns, that the said hereinabove described land and premises, with the appurtenances, unto said
475 party of the second part, his heirs and asssigns, from and against all persons claiming by, through, or under said parties of the first part as their heirs and assigns or any one of them the said parties of the first part and their heirs shall and will forever warrant and defend by these presents; and, further, that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part, his heirs and assigns, the said land and premises hereinabove granted the said parties of the first part and their heirs shall and will at all times, at the cost of the person requesting the same, do perform, execute, and deliver.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

A. C. GIRARD. [SEAL.]
ANNIE R. GIRARD. [SEAL.]
A. H. NICKERSON. [SEAL.]

Signed, sealed, and delivered in presence of—as to Annie R. Girard & A. H. Nickerson—
JAMES E. FITCH.
As to A. C. Girard:

Witness:
G. M. MILES.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

476 & 477 I, James E. Fitch, a notary public in and for the county and District aforesaid, do hereby certify that Annie R. Girard, wife of Alfred C. Girard, party to a certain deed bearing date on the seventh day of April, A. D. 1880, and hereto annexed, personally appeared before me, in the District aforesaid, the said Annie R. Girard being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed; and said Annie R. Girard, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this tenth day of April, A. D. 1880.

[NOTARIAL SEAL.] JAMES E. FITCH,
Notary Public.

TERRITORY OF MONTANA, *County of Custer,* } *ss:*

478 I, George M. Miles, a notary public in and for said county, in said Territory, do hereby certify that Alfred C. Girard, party to a certain deed bearing date on the seventh day of April, A. D. 1880, personally appeared before me in said county, the said Alfred C. Girard being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and my notarial seal this 24th day of April, A. D. 1880.

[NOTARIAL SEAL.] G. M. MILES,
Notary Public, Montana.

TERRITORY OF MONTANA, *County of Custer:*

I, W. W. Carland, dep. clerk distr. court, Custer county, M. T., do hereby certify that G. M. Miles, whose names is subscribed to the certificate of the proof of acknowledgment of the annexed instrument and written thereon, was, at the time of taking such proof and acknowledgment, a notary public in and for the county of Custer, Territory of Montana, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof *as* acknowledgment is genuine. I further certify
479 that said instrument is executed and acknowledged according to the laws of the Territory of Montana.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 24th day of April, A. D. 1880.

[COURT SEAL.] W. W. CAILAND,
Deputy Clerk of the District Court, 1st Judicial District of Montana, in and for Custer County.

EXHIBIT W. H. S. No. 3.

Deed. A. H. Nickerson *et ux.* to Susan A. Turner. Recorded January 4th, A. D. 1882, 12.45 p. m., liber No. 989, folio 487 *et seq.*

This indenture, made this 14th day of November, 1881, between Azor H. Nickerson and Emma Derby Nickerson, his wife, parties of the first part, and Susan A. Turner, trustee, under the will of Carolinus Turner, dec'd, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of forty-six hundred and fifty dollars to them in hand paid and provided for as hereinafter stated, the receipt of which, before the ensealing and delivery of these presents, is hereby ac-
480 knowledged, has granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto and to the use of the said party of the second part and her successors "all that certain piece or parcel of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as lot A of E. A. Woodward's subdivision of lot 38, in square No. 210, in George W. Riggs' subdivision of said square on Rhode Island avenue, in said city of Washington, between 14 & 15th streets (the house on said property being numbered 1457), together with the rights, easements, privileges, and appurtenances to the same belonging or in anywise appertaining, said lot fronting on Rhode Island avenue 22 feet and running west 100 feet by parallel lines to an alley;"

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of the said Susan A. Turner, trustee, as aforesaid, and her successors, in trust for the sole and separate use and benefit of Alice P. Matthews, wife of Wm. B. Matthews, free from the
481 costs, debts, and liabilities of her present or any future husband for her life, to be enjoyed by said Alice in such way as to the said trustee shall seem best, but said Alice to have no power to sell, bind, pledge, or dispose of in any way the rents, issues, and profits of the same before they shall have accrued and become due, and after the death of the said Alice, should she die leaving children or the descendants of children, then for the benefit of such children then living and the descendants of those dead, her stirpes; and should said Alice die, her husband surviving, leaving neither children nor descendants, then, for the benefit of said husband for his life, and at his death or at the death of said Alice, she having survived her husband, leaving neither children nor descendants, to go and pass to the children of said Carolinus Turner, then living and the descendants of those dead, her stripes, according to the will of said Carolinus Turner, dec'd. The consideration above referred to is as follows: The payment to said parties of the first part of twenty-six hundred and fifty dollars and the assumption by the party of the second part of a lien of two thousand dollars, secured by deed

482 of trust on said property given by Alfred C. Girard to James E. Fitch and Robert C. Fox, trustees, dated March 6th, 1879, and twice recorded in the land records of the District of Columbia, Washington city—first on April 21st, 1879, Liber 911, folio 219; second, June 23, 1879, Liber 916, folio 189—to secure Matthew Bryan a debt originally amounting to $3,000, now reduced to $2,000 by the payment of two of the notes therein secured; and the said parties of the first part hereby covenant with the said party of the second part, her successors and assigns, that the said hereinabove-described lands and premises, with the appurtenances, unto the said party of the second part, her successors and assigns, from and against all persons claiming by, through, or under said parties of the first part, and all persons whomsoever, the said parties of the first part shall and will forever warrant and defend by these presents; and, further, that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part, her successors and assigns, the said land and premises hereinabove granted the said parties of the first part shall and will at all times, at the cost of the person requesting the same, do,
483 perform, execute, and deliver; and the said parties of the first part further covenant unto and with the said party of the second part, her successors and assigns, that they are seized in fee of said land and premises, and have good right to convey the same; that said land and premises is freed from all incumbrances and liens thereon, whether for debts, taxes, or otherwise, except as hereinabove stated.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

A. H. NICKERSON. [SEAL.]
EMMA DERBY NICKERSON. [SEAL.]

H. C. CORBIN,
JESSIE S. CARMAN,
Witnesses as to A. H. Nickerson.

PAUL D. ——, of Dresden,
CARL SCHROEDER, of Dresden,
As Witnesses.

CITY OF WASHINGTON,
District of Columbia, } ss:

I, John E. Beal, a notary public in and for the district aforesaid, do hereby certify that on the twenty-third day of December, A. D. 1881, A. H. Nickerson, party to a certain deed, bearing date of the 14th day of November, A. D. 1881, and hereto annexed, personally
484 appeared before me in the city aforesaid, the said A. H. Nickerson being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-third day of December, A. D. 1881.

[NOTARIAL SEAL.] JOHN E. BEAL,
Notary Public.

KINGDOM OF SAXONY, *City of Dresden,* } *To wit:*

I, Jos. T. Mason, a United States consul in and for the city and kingdom aforesaid, do hereby certify that Emma Derby Nickerson, party to a certain deed, bearing date on the 14th day of November, A. D. 1881, and hereto annexed, personally appeared before me in the city aforesaid, the said Emma Derby Nickerson being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed, and the said Emma Derby Nickerson, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to
485 her by me, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and official seal this 14th day of November, A. D. 1881.

[CONSULATE SEAL.] JOS. T. MASON,
U. S. Consul.

EXHIBIT W. H. S. No. 4.

Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON *vs.* AZOR H. NICKERSON *et al.* } Eq. 9027.

It is hereby stipulated that the statute of frauds in force in Oregon at the time of the transactions mentioned in the proceedings in this cause may be read from the printed volumes containing the laws of said State and that said statutes may be so read at the hearing hereof without further proof thereof with the same force and effect as if the same had been regularly proven as evidence in this cause.

486 January 27, 1886.

J. J. JOHNSON,
Sol. for Complainant.
ENOCH TOTTEN,
For A. H. N.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I hereby certify that the foregoing depositions were taken down by me in short-hand at the times mentioned in the captions thereof and the same were by me transcribed; that the said witnesses read over and subscribed the said depositions; that the said witnesses were first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

I further certify that I am not of counsel nor in anywise interested in the result of this suit.

WM. HERBERT SMITH,
Examiner in Chancery.

Fees—$30.00—paid by check of H. W. Garnett and Conway Robinson, for defendants.

WM. H. SMITH, *Examiner.*

487 *Filed Apr.* 19, 1886. *R. J. Meigs, Clerk.*

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

In the Supreme Court of the District of Columbia. In Equity.

NICKERSON *vs.* NICKERSON *et al.* } Doc. No. 9027.

Be it remembered that, at an examination of witnesses begun and held on the 14 day of May, A. D. 1885, and continued from time to time by adjournment until the expiration of the order to —, when the within depositions were taken, I, James O. Clephane, an examiner in chancery, did cause to be personally present at the place and time stated in said deposition, in the city of Washington, in said District, the within witnesses to testify on the part and behalf of the complainant in a certain cause now pending in the supreme court of the District of Columbia wherein Emma C. D. Nickerson is complainant; Azor H. Nickerson and one — defendant.

JAMES O. CLEPHANE,
Examiner in Chancery.

488 NICKERSON *vs.* NICKERSON. } Equity 9027.

WASHINGTON, D. C., *May* 12, 1885.

You will please take notice that on Thursday, the 14 day of May, 1885, at 12 m., at the office of Henry Wise Garnett, 416 5th St. N. W., I will commence the taking of testimony for the complainant in the above-entitled cause, and continue the same from day to day until said testimony is completed.

JAMES O. CLEPHANE, *Examiner.*

Col. Enoch Totten.

In the Supreme Court of the District of Columbia.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON *et al.* } Equity No. —.

WASHINGTON, D. C., *May* 14, 1885.

Commission met pursuant to foregoing notice.

Present: On behalf of the complainant, J. J. Johnson, Esq., and on behalf of the defendants, Enoch Totten, Esq., and Messrs.
489 Garnett and Robinson.

Deposition of Lena D. Carter for Complainant.

LENA D. CARTER, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by Mr. JOHNSON:

Q. Please state your residence.

A. I reside in Washington, D. C.

Q. Please state if you are acquainted with Major A. H. Nickerson.

A. I am.

Q. Please state whether you were married to Major Nickerson at any time; and, if so, please give the date of such marr-age.

A. I was married to him on the 2nd day of April, 1883.

Q. Please state if you know where Major Nickerson was on the fifth day of June, 1883.

A. I do not. I did not know where he was at that time.

Q. Was he in the city?

A. Not to my knowledge.

490 Q. Please look at the paper I now hand you and state in whose handwriting it is, if you know.

(Handing witness paper filed with Major Nickerson's deposition and marked Exhibit No. 1.)

A. It is in my handwriting.

Q. I hand you the envelope addressed to Major A. H. Nickerson; tell me, if you please, in whose handwriting that is.

A. That is in my handwriting.

Q. Be kind enough to look at a letter I now show you and state in whose handwriting it is.

(Handing witness a letter.)

A. That is my handwriting.

(Counsel for complainant offers the same in evidence, and it is marked Exhibit A, L. D. C.)

The WITNESS: I would like to explain how I came to write that letter.

Q. You have that privilege.

A. In the latter part of May, 1882—I think about the 20th—Major Nickerson came to me and told me that he had instituted proceedings for divorce against the woman who was then his wife. He also went on to tell me that he had led a wretched and unhappy life since he had been married; that he had not been married
491 to that woman for more than twelve hourse when he wished himself dead. He stated that he had heard, very shortly after his marriage to her, that she had been intriguing with a married man and that she had herself frequently declared to him that she married him simply as a matter of convenience; he said he regarded himself as entitled to this divorce; a few years after her marriage she had had an affair with a brother officer, and related the circumstances. He stated that he had returned to his home about half past eleven one night and found her in the back room, as I understood him, with some man, acting in a very suspicious manner. When spoken to by him on the subject she gave the explanation that he was teaching her how to waltz. In the summer of 1880 she had broken up his home and taken her child and, against his expressed wish and without his consent, had gone to Europe to live; that they had separated months before she went abroad. In consequence of all this and his unhappy life with her he had concluded to file and had filed, some time previous to his telling me, proceedings for divorce, and that he intended to get a divorce whether
492 I married him or not. He then went on to declare his attachfor me, and asked me if I would promise, when this divorce was obtained, to become his wife provided his statements to me proved to be true. Of course, in the same connection, many other things were said that it is not necessary to repeat here. Therefore, when I wrote the letter you have just shown me, I was writing to the gentleman I was engaged to and I intended to marry, provided his statements were sustained by the court granting a divorce in his favor.

Cross-examination by Mr. GARNETT:

Q. Please state where that letter came from.

A. On the morning of the day on which it is dated I placed that letter, according to my present recollection, in a box with some jewelry I had and put it in my drawer; that box, with the letter, jewelry, and everything in it, was stolen some time during that day. I have been assured by Major Nickerson repeatedly that he never got or saw that letter.

Q. Did you ever mail it yourself?

A. I did not.

493 Q. Do you notice that it is written in lead pencil and written on tissue paper?

A. Yes, sir.

Q. Was that in a proper state for mailing?

A. No; it was not. I intended, if I sent that letter, to put it in another form altogether.

Q. Was it in this envelope?

A. I directed an envelope and placed it in it, but I had not put a stamp on the envelope at the time.

Q. I will ask you if you ever wrote to anybody upon leaves torn out of a letter-press copy book?

(Objected to by counsel for complainant as inadmissible.)

A. No, sir.

Q. Then, as I understand you, you had drawn this draft in lead pencil and had directed an envelope to put the letter in when you should have prepared it in proper form for sending, but that you never did prepare it in proper shape; that you never mailed it yourself, and never saw this draft after placing it in that box?

A. No, sir; I never had an opportunity to copy this draft, as it was stolen the same day after I had placed it in the box where I kept my jewelry and other little things.

494 Q. Previous to the writing of that letter to Major Nickerson who had informed you that Major Nickerson had instituted proceedings for a divorce?

(Objected to by counsel for complainant as not res-onsive to anything brought out by the examination-in-chief and as being based simply on the voluntary explanation of the witness as to her reason for writing the letter.)

A. He himself.

Q. How long previous to the writing of this letter, which I see is dated June 5th, had he first informed you that he had instituted proceedings for divorce?

A. Some weeks before; I think about the 20th of May.

Q. I understood you to say that Major Nickerson informed you that he had never received this letter?

(Objected to as hearsay evidence and inadmissible and as not being at all responsive to anything brought out in the examination-in-chief.)

A. Major Nickerson told me repeatedly that he had never received this letter.

Q. I understood you to state that after making this draft of the letter in lead pencil, as you stated, you placed it in the box; what was in the box besides this letter?

495 A. Some articles of jewelry, a gold glove-buttoner, a pair of cuff buttons, and one or two other little things. I think, perhaps, an odd ear-ring. Little articles of that character.

Q. Where was the box?

A. Placed in my drawer in my room in the house where I was boarding at the time.

Q. When did you look for that box after placing the letter in it?

A. The next morning.

Q. What had become of it?

A. It was gone then. I do not know what became of it.

Q. Do you know how it came to be gone?

A. I presume that the girl who waited upon the rooms stole that when she took a number of other articles from the house.

Q. What became of the girl?

A. She was gone.

Q. How soon after you had placed the letter in the box did she disappear?

A. She fixed up the rooms in the morning, and in the afternoon when she was sent on some errand by the lady of the house she was observed taking with her a basket, but which it was thought was to get the articles she had been sent for; it turned out, however, that she had placed a number of stolen things in that basket, and she never again made her appearance.

496 Q. She then went away finally on the afternoon of that day?

A. Yes, sir.

Q. Have you any knowledge of how the complainant in this case obtained possession of this letter?

A. No, sir; I have not.

(Counsel for complainant observes that there is no evidence to show that Mrs. Nickerson ever had it.)

Q. In July, 1880, where were you?

(Objected to by counsel for complainant as not being responsive to the examination-in-chief.)

A. I was at Fortress Monroe.

Q. You have stated that at this interview on the 20th of May, when Major Nickerson first informed you that he had instituted proceedings for divorce, he told you his wife had gone to Europe against his will?

(Objected to by counsel for complainant for the reason as above stated.)

A. Yes, sir.

Q. Did you know about her going?

(Objected to by counsel for complainant for the reason stated above.)

A. Not anything.

Q. Previous to that time had you any knowledge of any in-
497 tention on his part to institute any proceedings for divorce?

(Objected to by counsel for complainant as being manifestly incompetent and as not responsive to the examination-in-chief.)

A. None whatever.

Q. When you prepared this draft of this letter which has been introduced in evidence I understand that you had informed Major Nickerson a short time previous that if he maintained his divorce suit that you would then agree to marry him?

A. I did.

Q. How long before the date of this letter did you say that was?

A. That was some weeks before; about the 20th of May.
Q. Did you at any time assist in the divorce suit?

(Objected to by counsel for the complainant as not being responsive to the examination-in-chief.)

A. I did not; I did not have anything to do with it.
Q. I understand you to state that you prepared this lead-pencil draft as the draft of a letter which you subsequently intended to write?

(Objected to by counsel for the complainant for the reason stated above.)

A. Yes, sir; that is what I stated.
498 Q. Did you at any time have any intention of sending this draft of the letter just as it was?

(Objected to by counsel for complainant for the reason stated above.)

A. I never did intend to send it in that condition.
Q. Was that envelope sealed at the time you put it in your box?
A. No, sir; it was not; it was open, but addressed.
Q. And you put it in this envelope open?
A. Yes, sir; I had not the time then to make a copy of it, and I put it in there thinking I would do so afterwards.
Q. When was the last time you saw it?
A. It was on the morning of the 5th of June.

Redirect examination by Mr. JOHNSTON:

Q. Did you ever write any other letters to Major Nickerson in lead pencil?
A. No, sir; I did not.
Q. That is the only one?
A. I never wrote that letter to Major Nickerson in lead pencil.
Q. Did you write him any in lead pencil?
A. No, sir; nor any one else.

LENA D. CARTER.

Adjourned to meet on Friday, May 16th, at 4 o'clock p. m.

JAMES O. CLEPHANE, *Examiner.*

498½ EXHIBIT "A," L. D. C.

MY DEAREST: Just thinking of the few miles that separate us makes me very sad and anxious. You cannot tell what a relief it is to me when I know you are safely back again. We can never be apart in this world, my beloved. I am sure it would kill both of us. How little I can do for you and how much you are always doing for me. One thing I can do, and that is to love you with all my heart and soul, and that I shall never cease to do in this or that other world. Really I love you more every day of my life, and you become more and more necessary to my very existence. I wish I could tell

you the tender feelings that fill and overflow my heart for you. Every beautiful sky I look at, every flower I touch, every elevated sentence I read—in fact, everything brings the most exquisite thoughts to my mind of you, my hero, my lover. I am certain, darling, that our life together will be a lovely one. I wish the time were now. It will be before very long; then let the world do what it will; it cannot take away our delight and happiness in each other.

Truly, there is no pleasure in living for the world. Those who
499 have led such lives soon found it flat, stale, and unprofitable, but then it was too late to retract, and the tide of a pure life, not being taken at the flood, ebbs out and leaves their wrecked and ruined hope upon the other shore. Write me a long letter, now that I can keep your dear writing; it is such a comfort to me; and many hours that would otherwise be so desolate are made endurable by the many assurances of your tender love and devotion to me that your letters are so full of. All this, tho', is a poor compensation for the bodily presence, is it not? Ah! how I want you every minute; the time seems so long when you are away from me.

With a world of love and ten thousand kisses that I want to give in person,

I am yours forever, LENA D. CARTER.

June 5th, 1882.

(Subscription on envelope:) Major A. H. Nickerson, assistant adjutant gen., War Dep't, city.

(Postage stamp, right-hand corner, and postmark Washington, June 5, 7 p. m., 1882, D. C.)

500 WASHINGTON, D. C., *May* 16, 1885.

NICKERSON *vs.* NICKERSON.

Commission met pursuant to adjournment.

Present: Counsel on either side.

Owing to absence of witness adjourned until Monday, May 18th, 1885, to meet at the office of Messrs. Garnett and Robinson, in this city, at one o'clock p. m.

JAS. O. CLEPHANE, *Examiner.*

WASHINGTON, D. C., *May* 18, 1885.

Commission met pursuant to adjournment.

Present: Counsel on either side.

The examination of witnesses on behalf of the complainant was proceeded with as follows:

Deposition of George F. Green.

GEORGE F. GREEN, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

501 By Mr. JOHNSTON:

Q. Please state your residence and occupation.

A. I reside on Georgetown Heights, and my business is that of a banker.

Q. Were you at any time engaged with Middleton & Company; and, if so, in what capacity?

A. I was engaged for about ten years with Middleton & Company in the capacity of a book-keeper.

Q. Please look at the account I now hand you and state if that account is correctly taken from the books of Middleton & Company.

A. This is a correct transcript from the books of Middleton & Company.

Q. Did you compare it yourself?

A. Yes, sir.

Q. And made out the account?

A. Yes, sir.

(Paper introduced in evidence and marked Exhibit B.)

(Introduction of paper objected to by Mr. Totten as being incompetent, immaterial, and irrelevant.)

Cross-examination by Mr. TOTTEN:

Q. Did you make that account out yourself?

A. Yes, sir.

502 Q. It is a correct transcript from the books?

A. Yes, sir.

Q. And includes all the entries from the beginning to the end?

A. All the entries between those two dates of every description that enter into the account.

By Mr. GARNETT:

Q. Does this account run before and after these dates?

A. It is a full account between these dates.

Q. But it is not a complete transcript of the account of Major Nickerson?

A. No, sir.

GEO. F. GREEN.

Sworn & subscribed to before me this 18th day of May, 1885.

JAS. O. CLEPHANE, *Examiner.*

Deposition of Thomas Sheridan.

THOMAS SHERIDAN, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

503 By Mr. JOHNSTON:

Q. Please state your residence and occupation.
A. I reside at 759 S street, Washington, D. C., and am a clerk in the War Department.
Q. Are you acquainted with Major Nickerson?
A. Yes, sir.
Q. State whether or not Major Nickerson purchased from you the house and lot known as No. 7 Dupont Circle.
A. Yes, sir.
Q. How did he pay you for it—by check or cash?
A. He paid me by check.
Q. On what bank was the check made payable?
A. To the best of my opinion it was Middleton's, on F street.
Q. What did you do with the check?
A. I deposited it in Riggs' Bank.
Q. Did you get the money on it?
A. I deposited it there for safe keeping. I drew the money afterwards and used it.
Q. How much did he pay you for the house and lot?
A. $8,380.

THOS. SHERIDAN.

No cross-examination.

Sworn and subscribed to before me this 18th day of May, 1885.
JAS. O. CLEPHANE, *Examiner.*

504 *Deposition of John Finn.*

JOHN FINN, being of lawful age and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

By Mr. JOHNSON:

Q. Please state your residence and occupation.
A. I reside at 518 23rd street, Washington, D. C., and am a clerk in the War Department.
Q. Are you acquainted with Major Nickerson?
A. Yes, sir.
Q. How long have you known him?
A. Since 1861; somewhere about 1861 or 1862.
Q. When did you first meet him?
A. In the field in Virginia, the 8th Ohio, and he served in my regiment during the war.

Q. About what year did you meet him again when he was stationed at the War Department?

A. I met him when he was assigned there. I think it was somewhere along about 1878 or 1879; 1879, I think.

Q. Are you acquainted with Mrs. Nickerson, the first wife?

505 A. I met her once, I believe. I met her two or three times; in fact, I know her by sight. I am not personally acquainted with her.

Q. What were your duties at the War Department after Major Nickerson came there?

A. I was a messenger.

Q. His messenger?

A. No, sir; General Ruggles' messenger and General Breck's when Nickerson firstcame there.

Q. Was that anywhere near Major Nickerson's room?

A. Yes, sir; right at his door; the two doors were opposite one another, and I was right at the two doors.

Q. State whether or not you know whether or not Miss Carter called there to see Major Nickerson while he was there.

(Objected to by Mr. Totten as irrelevant and immaterial.)

A. Yes, sir; Miss Carter called there at the office to see him.

JOHN FINN.

No cross-examination.

Sworn and subscribed to before me this 18th day of May, A. D. 1885.

JAS. O. CLEPHANE, *Examiner.*

506 Adjourned to meet at the office of Mr. Garnett at half past 12 to-morrow, Tuesday, May 19, 1885.

In the Supreme Court of the District of Columbia.

NICKERSON *vs.* NICKERSON.

WASHINGTON, D. C., *May* 19, 1885.

Commission met pursuant to adjournment.

Present: Counsel on either side.

Counsel for complainant states that as Mrs. Kenny, in her deposition, refers to several letters in his (Mr. Johnson's) possession, and, among others, a letter from Major Nickerson to herself, he desires to say that he has made diligent search for all papers left with him by Mrs. Kenny or Mrs. Nickerson, and the only letter he finds of the character referred to by Mrs. Kenny is one dated Washington, August 2, 1881, which he offers in evidence and has the same marked Exhibit C, J. O. C.

(The introduction of this letter is objected to by Messrs. Garnett and Totten, of counsel for defendants, on the ground of being

507 incompetent, immaterial, and irrelevant, and also not properly proven.)

Counsel for complainant offers in evidence duly authenticated letter of Honorable John Hay, acting Secretary of State, introducing Mrs. Nickerson, the wife of Major Nickerson, United States Army, to the diplomatic and consular officers of the United States in Europe, together with the envelope. The paper is marked Exhibit D, J. O. C.

(Introduction of letter objected to by counsel for defendants on the ground of being incompetent, immaterial, and irrelevant, and also not properly proven and stating hearsay matter.)

Counsel for complainant next offers in evidence passport granted by State Department to Mrs. Nickerson, together with the envelope, and the same is marked Exhibit E, J. O. C.

(Counsel for the defendants object to the introduction of the paper on the ground of being incompetent, immaterial, and irrelevant, and also not properly proven.)

Counsel for the complainant next offers in evidence duly certified copy of decree of divorce granted Azor H. Nickerson against
508 Emma C. Nickerson in the court of common pleas No. 4 for the county of Philadelphia, and asks that the same be filed as an exhibit. The same is marked Exhibit F, J. O. C.

(Counsel for the defendants object to the introduction of the paper on the ground of being incompetent, immaterial, and irrelevant, and also as being only a part of a record.)

Counsel for complainant next offers in evidence paper marked Exhibit E. D. N. No. 1, in equity cause No. 8612, docket 23, being the decree annulling the decree of divorce. He asks consent of the counsel for the defendants when he shall receive a certified copy of said decree to withdraw the present copy and substitute the certified one. The same is marked Exhibit G, J. O. C.

(Counsel for the defendants object to the introduction of either the present or certified copy on the ground of the paper being incompetent, immaterial, and irrelevant, and also being only part of a record.)

Counsel for the complainant asks the consent of the counsel for the defendants to file as soon as received, providing it be received before closing his testimony, certified copy of the evidence of John Carpenter, taken in the divorce suit in Philadelphia; paper to be marked, when filed, Exhibit H, J. O. C.

509 (Counsel for the defendants state that that they will object to the filing of any such paper on the ground of its being incompetent, immaterial, and irrelevant, and also only a part of record.)

Counsel for the complainant offers in evidence and asks the same to be marked as an exhibit certified copy of the indictment in Philadelphia against Azor H. Nickerson; paper marked Exhibit I, J. O. C.

(Objected to by counsel for defendants on the ground of being incompetent, immaterial, and irrelevant, and not being properly proven.)

JAS. O. CLEPHANE, *Examiner.*

510 Ex. C, J. O. C.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *Aug.* 2*d*, 1881.

DEAR MAMMA: Yours of the 24th is rec'd. You wrote me a long time since in regard to Mr. Bancroft's letter to me, and I at once wrote him & I think received a reply in which he seemed vexed that you had written me about it. I cannot now recall all the circumstances. I only know that I never intentionally left a matter of his unattended to. Ingratitude is not one of my numerous faults. I am and have been for a long time perfectly overwhelmed with writing; have had a long, hard, and troublesome year, and when I feel as I have do not care to write to any one. Of course, I wrote to Em. once or twice a week, but she complains that I do not tell her this & that.

It is not my way. My embarrassments & troubles are my own. If she or my friend could help them I would let them know. They cannot, and when I know they cannot I must be allowed to fight them out in my own way. For Florence White's, Mrs. Pal-
511 mer's, and your own kindness I am grateful; say so for me if you please. Emma is now at Nordensy, as I presume she had advised you.

I am anxious for her to find a comfortable place and settle down; have nothing to do but rest and recuperate; am expecting that she will do so when she leaves Nordensy. She thinks of going to Dresden, and I presume, excepting the absence of her friends, she will be better off there.

She does not seem to want to leave Germany this year on account of Florence, and I think she is right. I prefer that they remain in Germany for two years before going to a French-speaking nation or where other than German is spoken. We have partly made up our minds that Florence, Italy, will be her next objective point. She may go there next spring, thus making her German stay only a year and a half. I don't like to plan so far ahead, but she seems to like to do so. I do not know that I shall go abroad at all; that is another thing I am uncertain about. I have not yet got away for my summer vacation (so necessary here), but shall go soon.

Yours sincerely, A. H. NICKERSON.

Kindness to all.

512 Ex. B, J. O. C.

Middleton & Co. in Account with A. H. Nickerson.

Dr.				Cr.			
1881.				1881.			
Nov. 15	To balance		$686	Nov. 16	By check, 507 68		
21	" c'ks		100		36		
Dec. 1	" cash		250				$543 68
2	" c'k		47 63	26	" "		50
6	" "		100	Dec. 1	" "		50
10	" cash		600	2	" "		50
15	" "		350	3	" R. M. 600, 50		
23	" "		34 93		50		
31	" draft		1,891		144 25		
							244 25
1882.				12	" "		350
Jan'y 5	" c'k		59	15	" " 58 50		
7	" Fredericksburg, coll. 1,576.56 less 2.95		1,568 61		200		258 50
				14	" "		146
				15	" " 50		
21	" draft		4,819		100		
26	" cash & c'ks		333 50				150
27	" " "		35	16	" "		100
24	" " "		119 80	17	" "		100
31	" c'k		50	20	" "		76 13
Feb'y 3	" "		109 25	24	" "		50
10	" d'ft		125	31	" "		143
14	" c'k		45				
15	" d'ft		339 67	1882.			
20	" "		4,902 88	Jan'y 3	" "		1,006 67
23	" c'k		81 50	4	" for draft		550
24	" 100 Wabash at 30, less com.		2,981 25	5	" "		150
				6	" 2,000 R. M		480
M'ch 2	" c'k		95	9	" check		200
8	" "		33 75	11	" "		256
25	" "		701 19	16	" "		642 50
27	" cash		200	23	" "		1,243
28	" £5		74 30	27	" "		252 50
Ap'l 11	" Fred'k coll. 535		534	Feb'y 13	" 800 R. M		192 75
				14	" check		93
26	" c'k		339 67	15	" 139 67		
27	" d'ft		69 50		579		
29	" c'k		75				718 67
May 4	" "		1,000	20	" 3,500 6s, est. 101¼ & less		3,548 12
				23	" 100 Wabash, 28¾ & less		2,893 75
				24	" check		50
				M'ch 2	" "		73 60
				11	" "		50
				13	" "		22
				14	" "		233
				21	" 500 R. M. 120		
					165 50		
					50		
							333 50
				31	" " 138		
					200		
							400
			22,701 41				15,702 62

Ex. B, J. O. C.—Continued.

Middleton & Co. in Account with A. H. Nickerson.

DR.			CR.			
513						
1882.	Forward	22,701 41	1882.	Forward		15,702 62
May 5	To check & cash	915	Ap'l 1	By checks. 50		
6	" cash	307		100		
11	" c'k & d'ft.	1,995 67		200		
17	" cash	400				350
22	" "	300	3	" " 100		
26	" "	250		100		
29	" "	200				200
June 14	" " & c'k	150	7	" "		569
15	" d'ft	3,555 38	8	" "		349
16	" cash	100	10	" "		200
17	" " & c'k	769 66	11	" "		86
19	" c'k	200	15	" " 146		
24	" "	560 50		1,000		
						1,146
			18	" "		200
			20	" "		500
			21	" "		50
			22	" " 100		
				25		
						125
			26	" 1,000 R. M		240 94
			May 3	" c'k		337
			19	" " 265		
				200		
						465
			20	" "		200
			25	" "		20
			29	" 1,000 R. M		240 80
			"	" c'k		98 52
			31	" "		67 75
			June 1	" "		200 00
			13	" "		83 33
			8	" " 200		
				1,000		
						1,200
			15	" "		8,080
			23	" "		62 25
			24	" " 73		
				1,000		
						1,073
			28	" "		30
				Balance		529 41
		$32,405 62				$32,405 62
June 28	To balance due A. H. Nickerson	$529 41				

514 UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit Mrs. Emma Derby Nickerson, wife of Major A. H. Nickerson, ass't adj't general U. S. Army, a citizen of the United States, accompanied by her minor daughter, safely and freely to pass, and in case of need to give her all lawful aid and protection.

Given under my hand and the seal of the Department of State, at the city of Washington, the 8th day of July, in the year 1880, and of the Independence of the United States the one hundred & fifth.

(No. 17895.) WM. M. EVARTS.

EXHIBIT E, J. O. C.

Description.

Age, 33 years; stature, 5 feet 5¾ inches, Eng.; forehead, medium; eyes, brown; nose, straight, rather small; mouth, medium; chin, ordinary; hair, brown, slightly gray; complexion, brunette;
515 face, square & thin.

____ ____.

[Signature of the bearer.]

EX. F, J. O. C.

Subpœna Surlibel for Divorce.

In the Court of Common Pleas No. 4 for the County of Philadelphia, of June Term, 1882.

AZOR H. NICKERSON
versus
EMMA C. NICKERSON. } No. 45.

And now, the seventeenth day of March, anno Domini 1883, on motion of Messrs. Read and Pettit, Esquires, attorney-for the libellant, rule granted on respondent to show cause why divorce should not be granted, returnable the thirty-first day of March, A. D. 1883.

And on the seventeenth day of March, anno Domini 1883, the return of Henry Phillips Coleman, Esquire, examiner, of the depositions of witnesses taken before him on the part of the libellant was presented and filed.

Whereupon the court, on the thirty-first day of March, in
516 the year of our Lord one thousand eight hundred and eighty-three, after mature and solemn deliberation, being satisfied therewith, and proclamation being duly made for the respondent to come forth, and she not appearing, *the court* do order, adjudge, and

decree that the said Azor H. Nickerson, the libellant, be divorced and separated from the bond of matrimony contracted with the said Emma C. Nickerson, the respondent, and that all and every the duties and claims accruing to either of the said parties by reason of the said marr-age shall henceforth cease and determine.

THE COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the decree in the cause wherein Azor H. Nickerson is libellant or plaintiff and Emma C. Nickerson is respondent or defendant, of June term, 1882, number 45, as full, entire complete, as the same remains on file in court of common pleas No. 4 for the county of Philadelphia in the case there stated.

In testimony whereof I have hereunto set my hand and
517 affixed the seal of the said court this third day of May, in the year of our Lord one thousand eight hundred and eighty-three.

WILLIAM B. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, *ss:*

I, M. Russell Thayer, president judge of the court of common pleas No. 4 for the county of Philadelphia, do certify that the foregoing record and attestation made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this third day of May, in the year of our Lord one thousand eight hundred and eighty-three.

M. RUSSELL THAYER,
Pres't Judge.

COUNTY OF PHILADELPHIA, *ss:*

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable M. Russell Thayer, by whom the foregoing attestation was made and
518 whose name is thereto subscribed, was, at the time of making thereof and still is, president judge of the court of common pleas No. 4 for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this 3rd day of May, in the year of Lord one thousand eight hundred and eighty-three.

WILLIAM B. MANN,
Prothonotary.

Ex. G. No. 4, J. O. C.

C. P. J. 82.

NICKERSON
vs.
NICKERSON. } No. 45.

And now, June 9th, 1883, it is ordered, adjudged, and decreed that the order heretofore made in this case on the 31st day of March, 1883, making absolute the rule for a divorce be rescinded;
519 that the decree of divorce *a vinculo matrimonii* entered in this case be, and the same is, absolutely annulled, vacated, and set aside for fraud in procuring the same; that the libel filed in this case be dismissed, & that all costs be paid by the libellant.

June 9, '83.

M. R. T.

THE COMMONWEALTH OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the order of court setting aside the decree of divorce made and entered in the cause wherein Azor H. Nickerson is libellant or plaintiff and Emma C. Nickerson is defendant, of June term, 1882, number 45, as full and complete as the same remains on file in court of common pleas No 4 for the county of Philadelphia, in the case there stated.

In testimony whereof I have hereunto set my hand and
520 affixed the seal of the said court this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

WILLIAM B. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, *ss:*

I, M. Russell Thayer, president judge of the court of common pleas No. 4 for the county of Philadelphia, do certify that the foregoing record and attestation made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

M. RUSSELL THAYER,
Pres't Judge.

COUNTY OF PHILADELPHIA, *ss*:

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable M. Russell Thayer, by whom the foregoing attestations was made
521 and whose name is thereto subscribed, was, at the time of making thereof and still is, president judge of the court of common pleas No. 4 for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

WILLIAM B. MANN,
Prothonotary.

No. 489.

UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that hereto annexed is a genuine original letter from this Department.

522 In testimony whereof I, Thomas F. Bayard, Secretary of State of the United States, have hereunto subscribed my name and caused the sale of the Department of State to be affixed May —, A. D. 1885, and of the Independence of the United States of America the one hundred and ninth.

T. F. BAYARD.

DEPARTMENT OF STATE.

To the diplomatic and consular officers of the United States in Europe.

GENTLEMEN: I take pleasure in herewith introducing to your personal acquaintance Mrs. Nickerson, the wife of Major A. H. Nickerson, of the adjutant general's office, War Department, who, accompanied by her little daughter, is about proceeding to Europe. The object of Mrs. Nickerson's visit is mainly to attend to the education of her child, for which purpose she will sojourn some time in each of the countries of Germany, Switzerland, Italy, and France.

523 I have, therefore, to request that you will extend to Mrs. Nickerson any courtious attention not inconsistent with your official duties which may materially aid her in the object she has in view or which may contribute to her pleasure while abroad.

I am, gentlemen, your obedient servant,

JOHN HAY,
Acting Secretary.

Ex. I. J. O. C.

In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace for the City and County of Philadelphia. March Sessions, 1884.

CITY AND COUNTY OF PHILADELPHIA, *ss*:

The grand inquest of the Commonwealth of Pennsylvania, inquiring for the city and county of Philadelphia, upon their respect-
524 ive oaths and affirmations, do present that Azor H. Nickerson, late of the said county, yeoman, on the first day of May, in the year of our Lord one thousand eight hundred and eighty-two, at the county aforesaid and within the jurisdiction of this court, with force and arms, &c., before Robert R. Smith, magistrate of court number eight, in and for the city of Philadelphia aforesaid, in his own proper person, did come and then and there before the said Robert R. Smith, as such magistrate as aforesaid, did produce, exhibit, and sign and subscribe the name of him, the said Azor H. Nickerson, to and upon a certain instrument and statement in writing purporting to be the petition of him, the said Azor H. Nickerson, to the honorable the judges of the court of common pleas number 4 for the city and county of Philadelphia aforesaid, and wherein he, the said Azor H. Nickerson, designated and called the libellant, and one Emma C. Nickerson is designated and called the respondent, which said written instrument is commonly called a "petition in divorce" and a "libel in divorce," and which said written instrument is as follows—that is to say:

525 In the Court of Common Pleas No. 4 for the City and County of Philadelphia.

AZOR H. NICKERSON *vs.* EMMA C. NICKERSON.

To the honorable the judges of the said court:

The petition of Azor H. Nickerson (meaning the said Azor H. Nickerson) respectfully represents—

That a marriage was contracted and celebrated between the libellant (meaning the said Azor H. Nickerson) and Emma C. Nickerson (née Derby) on the thirteenth day of August, A. D. 1870, in the city of San Francisco and State of California, and, although by the laws of God as well as by their mutual vows in this behalf, the said Emma C. Nickerson and the libellant (meaning the said Azor H. Nickerson) were bound to that uniform constancy which belongs to the marriage state, yet so it is that the said Emma C. Nickerson, in violation of her marriage vow, from the ninth day of July, A. D. 1880 (meaning the ninth day of July, in the year of Lord one thousand eight hundred and eighty), hath wilfully and maliciously deserted and absented herself from the habitation of this libel-
526 lant (meaning the said Azor H. Nickerson), without any just or reasonable cause, and such desertion hath persisted in for

the term of twenty-two months, to wit, ever since, and yet doth continue to absent herself from the said libellant (meaning the said Azor H. Nickerson).

Wherefore your petitioner (meaning Azor H. Nickerson), showing that the present residence of the respondent (meaning the said Emma C. Nickerson) is unknown, except that it is some place in Europe (meaning thereby that the residence of the said Emma C. Nickerson was then unknown to him, the said Azor H. Nickerson), and that her (meaning the said Emma C. Nickerson) last known place of residence (meaning thereby the last place — residence of the said Emma C. Nickerson known to him, the said Azor H. Nickerson) was in the city of Washington, D. *D.* (meaning in the city of Washington, in the District of Columbia), and that she (meaning the said Emma C. Nickerson) is a citizen of the State of Pennsylvania, and that your petitioner (meaning himself, the said Azor H. Nickerson) is a citizen of this Commonwealth (meaning the Commonwealth of Pennsylvania), and hath resided therein (meaning the said Commonwealth of Pennsylvania) for one whole year previous to the filing of this his (meaning the said Azor H. Nickerson's) petition and libel, and
527 that his residence (meaning the residence of him, the said Azor H. Nickerson) is at present (meaning on the said first day of May, in the year of Lord one thousand eight hundred and eighty-two) at No. 909 Cherry street, in the city of Philadelphia, Pennsylvania; that at the time of the said marriage your petitioner (meaning himself, the said Azor H. Nickerson), though a citizen of Pennsylvania, was an officer in the United States Army, and as such officer therefrom on duty in the department of the Columbia, Oregon, and has been, at various times and in various places, *or* absent from the State on duty, both before and since; that in July, A. D. 1880 (meaning the month of July, in the year of our Lord one thousand eight hundred and eighty), he (meaning himself, the said Azor H. Nickerson) took up his residence in the city of Philadelphia, as above stated, and the same has ever since been his residence (meaning the residence of himself, the said Azor H. Nickerson), and where he has resided, except when ordered away on duty in the United States Army.

Prays that a subpœna may issue from said court, directed to the said Emma C. Nickerson, commanding her to appear at the next term thereof to answer said petition or libel and show cause why libellant (meaning himself, the said Azor H. Nickerson) should not be divorced and separated from the nuptial tie and bond of
528 matrimony contracted as aforesaid with the said Emma C. Nickerson.

And your petitioner (meaning himself, the said Azor H. Nickerson), will ever pray, &c.

A. H. NICKERSON,
(*Meaning Thereby Himself, the said Petitioner, Azor H. Nickerson.*)

CITY AND COUNTY OF PHILADELPHIA, *ss*:

Azor H. Nickerson (meaning himself, the said Azor H. Nickerson), being duly sworn according to law, deposes and says that the state-

ment of facts contained in the above petition or libel is true to the best of his knowledge and belief, and that the said complaint is not made out of levity or by collusion between him and the said Emma C. Nickerson, and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition or libel.

A. H. NICKERSON,
(*Meaning Himself, the said Azor H. Nickerson.*)

Sworn and subscribed before me this 1st day of May, A. D. 1882.

And then and there, before the said Robert R. Smith, as such magistrate as aforesaid, he, the said Azor H. Nickerson, did take his corporal oath, the said oath then and there being administered
529 to him, the said Azor H. Nickerson, by the said Robert R. Smith, as such magistrate as aforesaid, he, the said Robert R. Smith, as such magistrate as aforesaid, then and there having lawful and competent power and authority to administer an oath to him, the said Azor H. Nickerson, in that behalf, and he, the said Azor H. Nickerson, then and there being lawfully sworn by and before the said Robert R. Smith, as such magistrate as aforesaid, touching and concerning the truth of the statement of facts contained in the said petition, libel, and written instrument aforesaid so then and there signed and subscribed by him, the said Azor H. Nickerson as aforesaid, then and there lawfully did fals-ly, wilfully, and corruptly swear, depose, and say that the statement of facts contained in the said petition, libel, deposition, and written instrument was true to the best of his knowledge and belief, whereas in truth and in fact, as he, the said Azor H. Nickerson, then and there well knew, the statement of facts contained in the said petition, libel, deposition, and written instrument then and there — not true, and the said Emma C. Nickerson from the said ninth day of July, in the year of our Lord one thousand eight hundred and eighty, had not wilfully and maliciously deserted and absented herself from the habitation of the said
530 Azor H. Nickerson as aforesaid, and the said Emma C. Nickerson had not, in violation of her marriage vow, from the said ninth day of July, in the year of our Lord one thousand eight hundred and eighty, wilfully and maliciously deserted and absented herself from the habitation of the said Azor H. Nickerson without any just or reasonable cause and had not persisted in such desertion for the said term of twenty-two months and then did not continue to absent herself from the said Azor H. Nickerson, as in the said petition, libel, deposition, and written instrument mentioned and set forth; and whereas, in truth and in fact, as he, the said Azor H. Nickerson, then and there well knew the then present residence of the said Emma C. Nickerson was not then and there unknown to him, the said Azor H. Nickerson, as aforesaid, and the last place of residence of the said Emma C. Nickerson known to him, the said Azor H. Nickerson, was not in the city of Washington, in the District of Columbia, as aforesaid, and the said Emma C. Nickerson

was not a citizen of the State of Pennsylvania as aforesaid, and he, the said Azor H. Nickerson, had not resided in the said Commonwealth of Pennsylvania for one whole year previous to the filing of the said petition and libel as aforesaid, and the residence of
531 him, the said Azor H. Nickerson, was not then and there at No. 909 Cherry street, in the city of Philadelphia, Pennsylvania, as aforesaid, and in the said month of July, in the year of our Lord one thousand eight hundred and eighty, the said Azor H. Nickerson did not take up his residence in the city of Philadelphia, as in the said petition and libel above stated and as in the said petition, libel, deposition, and written instrument mentioned and set forth as aforesaid, and thereupon the said Robert R. Smith, as such magistrate as aforesaid, did then and there affix his official seal and sign and subscribe his name as such magistrate to and upon the said unlawful, false, wilful, and corrupt deposition, petition, libel, and written instrument, and which said unlawful, false, wilful, and corrupt oath, deposition, and libel in divorce so made, signed, and sworn to by the said Azor H. Nickerson as aforesaid and atttested, signed, and subscribed under and with the hand and official seal of the said Robert R. Smith as such magistrate as aforesaid is as follows—that is to say:

532 In the Court of Common Pleas No. 4 for the City and County of Philadelphia.

AZOR H. NICKERSON *vs.* EMMA C. NICKERSON.

To the honorable the judges of the said court:

The petition of Azor H. Nickerson respectfully represents that a marriage was contracted and celebrated between the libellant and Emma C. Nickerson (*née* Derby) on the thirteenth day of August, A. D. 1870, in the city of San Francisco and State of California; and although, by the laws of God as well as by their mutual vows in this behalf, the said Emma C. Nickerson and the libellant were bound to that uniform constancy which belongs to the marriage state, yet, so it is, that the said Emma C. Nickerson, in violation of her marriage vow, from the ninth day of July, A. D. 1880, hath wilfully and maliciously deserted and absented herself from the habitation of this libellant without any just or reasonable cause, and such desertion hath persisted in for the term of about twenty-two months, to wit, ever since, and yet doth continue to absent herself from the said
533 libellants. Wherefore your petitioner, showing that the present residence of the respondent is unknown, except that it is some place in Europe, and that her last known place of residence was in the city of Washington, D. C., and that she is a citizen of the State of Pennsylvania, and that your petitioner is a citizen of this Commonwealth and hath resided therein for one whole year previous to the filing of this his petition and libel, and that his residence is at present at No. 909 Cherry street, in the city of Philadelphia, Pennsylvania; that at the time of the said marriage your petitioner, though

a citizen of Pennsylvania, was an officer in the United States Army, and, as such officer, absent therefrom on duty in the department of the Columbia, Oregon, and has been, at various times and in various places, so absent from the State on duty both before and since; that in July, A. D. 1880, he took up his residence in the city of Philadelphia as above stated, and the same has ever since been his residence and where he has resided, except when ordered away on duty in the United States Army, prays that a subpœna may issue from said court directed to the said Emma C. Nickerson, commanding her to
534 appear at the next term thereof to answer said petition or libel and show cause why libellant should not be divorced and separated from the nuptial tie and bond of matrimony contracted as aforesaid with the said Emma C. Nickerson.

And your petitioner will ever pray, &c.

A. H. NICKERSON.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

Azor H. Nickerson, being duly sworn according to the law, deposes and says that the statement of facts contained in the above petition or libel is true to the best of his knowledge and belief, and that the said complaint is not made out of levity or by collusion between him and the said Emma C. Nickerson and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition or libel.

A. H. NICKERSON.

Sworn and subscribed before me this 1st day of May, A. D. 1882.
[SEAL.] ROBERT R. SMITH, *Magistrate.*

535 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said Azor H. Nickerson afterwards, to wit, on the second day of May, in the year of our Lord one thouaand eight hundred and eighty-two, at the county aforesaid and within the jurisdiction of this court, did cause and procure the said unlawful, false, wilful, and corrupt oath, affidavit, and libel in divorce to be presented before the judges of the said court of common pleas number four for the city and county of Philadelphia aforesaid and to be filed in the said court of common pleas number four for the city and county of Philadelphia among the records thereof of June term, in the year of our Lord one thousand eight hundred and eighty-two, number forty-five, and thereupon a subpœna was then and there issued out of the said court of common pleas number four for the city and county of Philadelphia directed to the said Emma C. Nickerson, commanding her to appear at the next term of the said court to answer the said petition and libel in divorce, and thereupon the said unlawful, false, wilful, and corrupt oath, affidavit, and libel in divorce and the statement of facts contained in the said libel in divorce became and were mate-

rial in the trial and determination of the said facts in the
536 issue so then and there pending in the said court of common pleas number four for the city and county of Philadelphia between the said Azor H. Nickerson and the said Emma C. Nickerson, and thereupon and thereafter such proceedings in law were had in the said court of common pleas number four for the city and county of Philadelphia that the said issue so found between the said Azor H. Nickerson and Emma C. Nickerson as aforesaid has since been fully and finally adjudicated, determined, and ended.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said Azor H. Nickerson, on the said first day of May, in the year of our Lord one thousand eight hundred and eighty-two, at the county aforesaid and within the jurisdiction of this court, with force and arms, &c., before the said Robert R. Smith, magistrate of court number eight in and for the city of Philadelphia aforesaid, unlawfully did in manner and form aforesaid wilfully and corruptly commit wilful, false, and corrupt perjury contrary to the form of the act of the General Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania.

GEORGE S. GRAHAM,
District Attorney.

537 *Docket Entry.*

THE COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

March Session, 1884.

COM. PENN. }
vs. } 358.
AZOR H. NICKERSON. }

True bill.

I, W. E. Littleton, esquire, clerk of the court of oyer and terminer and general jail delivery and quarter sessions of the peace for the city and county of Philadelphia, do certify that the foregoing is a true copy of the whole record in the cause wherein the Commonwealth of Pennsylvania — plaintiff, and Azor H. Nickerson — defendant, of March term, 1884, number 358, as full, entire, and complete as the same remains on file in the court of oyer and terminer and general jail delivery and quarter sessions of the peace for the city and county of Philadelphia in the case there stated.

538 In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 16 day of May, in the year of our Lord one thousand eight hundred and eighty-five.

W. E. LITTLETON, *Clerk.*

COUNTY OF PHILADELPHIA, *ss:*

I, Joseph Allison, judge of the court of oyer and terminer and general jail delivery and quarter session- of the peace in and for the

city and county of Philadelphia, do certify that the foregoing record and attestation made by W. E. Littleton, esquire, clerk of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper office-.

In testimony whereof I have hereunto set my hand this 16 day of May, in the year of our Lord one thousand eight hundred and eighty-five.

JOSEPH ALLISON.

COUNTY OF PHILADELPHIA, *ss:*

I, W. E. Littleton, esquire, clerk of the court of oyer and terminer and general jail delivery and quarter session- of the peace in and for the city and county of Philadelphia, do certify that the Honorable Joseph Allison, presiding judge, by whom the
539 foregoing attestation was made, and whose name is thereto subscribed, was, at the time of making thereof, and still is a judge of the court of oyer and terminer and general jail delivery and quarter sessions of the peace in and for the city and county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 16 day of May, in the year of our Lord one thousand eight hundred and eighty-five.

W. E. LITTLETON, *Clerk.*

Nov. 19, 1885.

And now comes John J. Johnson, solicitor for Emma C. D. Nickerson, in the case of Nickerson & Nickerson, equity, No. 9027, under the order of the court extending the time for taking testimony on behalf of the complainant, and offers in evidence the following papers, being certified copies from the proceedings of the court of common pleas No. 4 for the county of Philadelphia, State of Pennsylvania, which said papers are filed and marked, respectively, exhibits.

540 In the Supreme Court of the District of Columbia.

AZOR H. NICKERSON *vs.* EMMA C. NICKERSON.

WASHINGTON, D. C., *November* 25, 1885.

Commission met pursuant to adjournment at the law office of Messrs. Garnett & Robinson, in this city.

Present: Counsel for the complainant, J. J. Johnson, Esq., and for the defendant, Mr. Garnett.

The solicitor for the plaintiff offers in evidence the following papers: First, the certified copy of the petition of Azor H. Nickerson petitioning for a divorce in the court of common pleas No. 4, city and county of Philadelphia, and the same is marked Exhibit —; second, also certified copy of the deposition of William B. Matthews given in the case of Azor H. Nickerson *vs.* Emma C. Nickerson, court of

common pleas No. 4, in the city and county of Philadelphia, and the same is filed and marked Exhibit —; also certified copy of docket entries, with the deposition of John W. Carpenter, in the case of
541 Azor H. Nickerson *vs.* Emma C. Nickerson, in the court of common pleas No. 4, in the city and county of Philadelphia, and also a certified copy of the decree in the case of Azor H. Nickerson *vs.* Emma C. Nickerson, in the court of common pleas No. 4, in the city and county of Philadelphia, annulling the decree granting the divorce in said case, which is herewith filed and marked Exhibit —.

To the introduction of the first paper defendant's counsel objects for the reason that the same is irrelevant, immaterial, and impertinant to the issue, and for the further reason that the same does not purport to be the entire record in said cause, but only a part thereof; and also objects on the ground that the record of the petition of said Azor H. Nickerson is inadmissable unless it is purported to be the only proceeding in said cause.

To the second paper defendant's counsel objects for the reason that the same is irrelevant, immaterial, and impertinent to the issue, and for the further reason that the same does not purport to be the entire record in said cause, but only a part thereof; and also objects on the ground that the deposition of William B. Matthews is inadmissible unless it is purported to be the only proceeding in said cause.

542 To the third paper defendant's counsel objects for the reathat the same is irelevant, immaterial, and impertinent to the issue, and for the further reason that the same does not purport to be the entire record in said cause, but only a part thereof, and for the further reason that docket entries are not part of the record, and also because the said docket entries and deposition of Carpenter to the decree in said cause are inadmissible, because they do not purport to be the entire record in the proceeding.

The same objection is made with regard to the fourth paper, namely, what is alleged to be a copy of the decree in the case of Azor H. Nickerson *vs.* Emma C. Nickerson, in the court of common pleas No. 4 of the city and county of Philadelphia, annulling the decree granting the divorce in said cause.

Adjourned.

In the Court of Common Pleas No. 4 for the City and County of Philadelphia.

AZOR H. NICKERSON *vs.* EMMA C. NICKERSON.

To the honorable the judges of the said court:

543 The petition of Azor H. Nickerson respectfully represents:

That a marriage was contracted and celebrated between the libellant and Emma C. Nickerson (*née* Derby) on the thirteenth day of August, A. D. 1870, in the city of San Francisco and State of California.

And, although by the laws of God, as well as by their mutual vows

in this behalf, the said Emma C. Nickerson and the libellant were bound to that uniform constancy which belongs to the marriage state, yet so it is that the said Emma C. Nickerson, in violation of her marriage vow, from the ninth day of July, A. D. 1880, hath wilfully and maliciously deserted and absented herself from the habitation of this libellant without any just or reasonable cause, and such desertion hath persisted in for the term of about twenty-two months, to wit, ever since, and yet doth continue to absent herself from the said libellant.

Wherefore your petitioner, showing that the present residence of the respondent is unknown, except that it is some place in Europe, and that her last-known place of residence was it the city of Washington, D. C., and that she is a citizen of the State of Pennsylvania;

544 And that your petitioner is a citizen of this Commonwealth and hath resided therein for one whole year previous to the filing of this his petition, and that his residence is at present at #909 Cherry street, in the city of Philadelphia, Pennsylvania; that at the time of the said marriage your petitioner, though a citizen of Pennsylvania, was an officer of the United States Army, and as such officer absent therefrom on duty in the department of the Columbia, Oregon, and has been at various times and in various places so absent from the States on duty both before and since; that in July, A. D. 1880, he took up his residence in the city of Philadelphia, as above stated, and the same has ever since been his residence and where he has resided except when ordered away on duty in the United States Army—

Prays that a subpœna may issue from said court, directed to the said Emma C. Nickerson, commanding her to appear at the next term thereof to answer said petition or libel and show cause why libellant should not be divorced and separated from the nuptial tie and bond *on* of matrimony contracted as aforesaid with the said Emma C. Nickerson; and your petitioner will ever pray, &c.

A. H. NICKERSON.

545 CITY AND COUNTY OF PHILADELPHIA:

Azor H. Nickerson, being duly sworn according to law, deposes and says that the statement of facts contained in the above petition or libel is true to the best of his knowledge and belief, and that the said complaint is not made out of levity or by collusion between him and the said Emma C. Nickerson and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition or libel.

A. H. NICKERSON.

Sworn and subscribed before me this 1st day of May, A. D. 1882.

[SEAL.] ROBERT R. SMITH,
Magistrate.

Endorsed: 45. June 5, 1882. C. P. No. 4. A. H. Nickerson *vs.* Emma C. Nickerson. Libel in divorce. Filed May 2, 1882. Let subpœna issue. T. R. E. Read and Pettit.

546 THE COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the petition or libel for divorce filed May 2, 1882, in the cause wherein Azor H. Nickerson is libellant or plaintiff and Emma C. Nickerson is the respondent or defendant, of June term, 1882, number 45, as full, entire, and complete as the same remains on file in court of common pleas No. 4 for the county of Philadelphia in the case there stated.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-five, 1885.

WILLIAM B. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, *ss:*

I, M. Russell Thayer, president judge of the court of common pleas No. 4 for the county of Philadelphia, do certify that
547 the foregoing record and attestation made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-five, 1885.

M. RUSSEL THAYER,
Pres't Judge.

COUNTY OF PHILADELPHIA, *ss:*

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable M. Russell Thayer, by whom the foregoing attestation was made and whose name is thereto subscribed, was, at the time of making thereof and still, is president judge of the court of common pleas No. 4 for the county of Philadelphia, duly commissioned and sworn, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-five, 1885.

WILLIAM B. MANN,
Prothonotary.

548 *Deposition of Wm. B. Matthews.*

In the Court of Common Pleas *Most* for the County of Philadelphia of June Term, 1882.

AZOR H. NICKERSON
vs.
EMMA C. NICKERSON. } No. 45.

W. B. Matthews, residing at 1457 Rhode Isl'd Ave., Washington, D. C., place of business War Department, Washington, D. C., attorney-at-law, a witness produced, sworn, and examined on behalf of the libellant in the above case, deposes and says as follows:

In answer to the first interrogatory: I am an attorney-at-law and am at present employed in the War Dep't, & also have an office at 1424 New York Ave. I know the libellant, but not the respondent; have known the libellant about two years. From the time I first knew him he was on duty in the War Dep't until last June, when he was, at his own request, retired from active service and ordered to his home, in Philadelphia.

To the second interrogatory: I was not present at this marriage, nor do I know when or by whom married, nor whether they have lived or cohabited together.

To the third interrogatory: Soon after meeting the libel-
549 lant, from my frequent visits to him, I discovered that there was something of a serious character preying on his mind, for at times his manner to me was strange & incomprehensible unless viewed from the above standpoint. Having the custody of nearly all his business matters & occupying very intimate relationship with him, I considered it strange that he did not confide to me his trouble. On several occasions he made allusions to some trouble of such a character that he could not confide it to any man; to use his language, "Not even to you," although he declared he had the most implicit confidence in my honor. He informed me that the matter did not concern himself alone, but others, and that rather than give publicity to the matter he had at times thought seriously of ending his own life and his troubles; that he felt proud of the position he had won by hard service in the field, both during and since the war; that his position suited him, but if his domestic troubles should become a matter of public notoriety & discussion he felt that he would rather be out of it entirely & would have to leave. After this, at another interview, he said, "Matthews, have you ever con-
jectured what my trouble is?" I replied, "I had; I thought it
550 concerned his wife." He replied, "You are right." He then went on to say that she had left him and gone to Europe & has been absent for some time; that he had one child—a daughter—and that rather than reflect upon her he would do anything; that if he entered suit for divorce the matter, from his official position, would create scandal. It would be exceedingly harassing & otherwise obnox-

ious; that even since his wife left him he had been cautious to keep his troubles a profound secret, even from his friends, at the same time cautioning me to keep the matter buried in my own bosom. I informed him that he would have to institute proceedings in Philadelphia & advised the employment of local counsel. From the time of the institution of the proceedings down to the present the libellant has been unfitted for business, both on account of his trouble & frequent illness, caused by a wound received in the battle of Gettysburgh in the region of the heart, and not long since, of his own accord and at his request, he was retired from his position as ass't adj't gen. in the United States Army, since which time, as far as I am aware, he has done nothing; certain it is that I have never been able to get him to attend to important matters of business, he
551 being all the while harassed, as he informed me, by his domestic troubles. His family relations having been broken up, he had no particular desire to engage in any kind of business. I don't know the exact date that his wife left him, but I know that she has never been with him since. I *have* first made his acquaintance in April, 1881. I knew that she was in Europe some months ago. From the time I first met the libellant until his retirement he was on duty in Washington as ass't adj't gen., U. S. A. During the cou-se of conversations on the subject he informed me that, notwithstanding his precarious health, his wife had left him against his will. All I know in reference to the ladies' desertion of the libellant I have, of course, gathered from my frequent conversations with the libellant.

To the fourth interrogatory: From intimate acquaintance with him I regard him as a warm-hearted, generious, & courteous gentleman—a man of high honor & integrity & scrupulously honest & upright in all his affairs and altogether worthy of confidence.

W. B. MATTHEWS.

Sworn and subscribed before me this 12th day of March, A. D. 1883.

HENRY PHILLIPS COLEMAN, *Examiner.*

552 COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the whole deposition of Wm. B. Matthews in the cause wherein Azor H. Nickerson — plaintiff and Emma C. Nickerson — defendant, of June term, 1882, number 45, as full, entire, and complete as the same remains on file in court of common pleas No. 4 for the county of Philadelphia in the case there stated.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this sixth day of June in the year of our Lord one thousand eight hundred and eighty-five.

WILLIAM C. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, *ss:*

I, M. Russell Thayer, president judge of the court of common pleas No. 4 for the county of Philadelphia, do certify that the fore-
553 going record and attestation made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 6th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

M. RUSSELL THAYER,
Pres't Judge.

COUNTY OF PHILADELPHIA, *ss:*

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable M. Russell Thayer, by whom the foregoing attestation was made and whose name is thereto subscribed, was, at the time of making thereof and still is, the president judge of the court of common pleas No. 4 for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this 6th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

WILLIAM B. MANN,
Prothonotary.

554 *Exempli-cation.*

STATE OF PENNSYLVANIA, *Philadelphia County,* } *sct:*

Among the records and proceedings of the court of common pleas No. 4 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 45, June term, 1882, to wit:

Docket Entries. June Term, 1882.

Read and Pettit. Chas. M. Hough. 5–22, '83.

45. Azor H. Nickerson *vs.* Emma C. Nickerson.
May 2, 1882.—Libel filed.

Jan'y 29, 1883.—Interrogatories filed.

M'ch 7, 1883.—Examiner's report filed.

May 21, 1883.—Rule to set aside decree and award alimony to the respondent *pendente lite*.

555 *Eo die.*—Aff't of Emma C. Nickerson filed.

June 9, 1883.—Rule absolute to set aside decree of divorce; residue of rule discharged. See minute book. Py.

Eo die.—Testimony taken June 5, '83, filed.

Eo die.—Testimony taken May 29, '83, filed.

Pro. p'd.
C. H. W.
M'ch 31, '83.

Subp's in divorce, A. V. M., ex't May 2, 1882; ret. 1 Mon. June, 1882. M. E. I.

August 2, 1882.—Als. subp's ex't; ret. 3d Monday Septem., 1882. M. E. I.

Novem. 3, 1883.—Order of publication ex't; ret. 1st Monday Decem., 1883. Published as commanded. N. E. S. Ask respondent.

Jan. 20, 1883.—The court appoint- Henry Phillips Coleman, Esq., examiner.

M'ch 1, 1883.—Rule for a divorce. A. V. M.

M'ch 31, 1883.—Proof of publication of rule filed.

Eo die.—Rule absolute divorce decreed and proclamation made.

556 *Deposition of John W. Carpenter.*

C. P. No. 4. June, 1882.

AZOR H. NICKERSON
vs.
EMMA C. NICKERSON. } No. 45.

John W. Carpenter, residing at 1505 15th St., Washington, D. C., servant, a witness produced, sworn, and examined on behalf of the libellant in the above case, deposes and says as follows:

In answer to the first interrogatory: I have known Major and Mrs. Nickerson for about four years. I lived with them as servant from the time he came to Washington; it was then that I knew him.

To the second interrogatory: I was not present at their marriage, nor do I know who married them. While I was with them they lived together as man and wife, up to the time of the desertion, at the Ebbitt House and other hotels and at 1509 Rhode Island avenue and at 1457 Rhode Island avenue, Washington, D. C.

To the third interrogatory: While they were living at 1457 Rhode I'd Av. I was with them as a house servant. In May, 1880,
Mrs. Nickerson told me that she was going away that month,
557 but Major Nickerson stopped her going. Again, in the early
part of July following, she told me that she was going away to Europe, and that time she did go, and the last I heard of her she was still there. When Major Nickerson heard that she was going away he was very angry about it & seemed very much upset. At the time he said, "I do not know what I am going to do, as Mrs. Nickerson is going to leave me without my consent." She took about four trunks with her. Major Nickerson was not present when she told me. In about a week after that she left Major Nickerson's house and took her child with her. The child was about eight years old. After she left the Major was taken quite, sick and told me not to say anything about her leaving, to prevent scandal. She left early in the morning. I do not recollect the day of the week or month. Up to the time she left she did not say why she was going nor did she give any reason at all. From my knowledge as a house servant and seeing them together daily, she had no cause for leaving the Major, but she did leave against his will. After she left he said that he was going away, his family was broken up, and he then said that he would break up his residence in Washington & go to his house
in Philadelphia. He did break up his house and stored some
558 of his furniture in Washington & took the rest with him to
his house in Phila. He discharged the servants immediately after Mrs. Nickerson left. My wife was not a servant in his house. After Mrs. Nickerson left she cooked for a mess of officers, of whom Major Nickerson was one. I have lived with Major Nickerson ever since whenever he was in Washington on duty or in Philadelphia. Mrs. Nickerson has not lived with him at any time since she left him. I have frequently since July, 1880, nursed him during his several illnesses, frequently sitting up with him all night, both in Washington and Philadelphia. She nor no other woman has ever been with him since she left him. After he had taken some of his furniture to Philadelphia he returned to Washington in about two or three weeks. From that time, when on duty there, Maj. Nickerson lived in rooms or messed with other officers and took his meals in different places. I visited his rooms two or three times a day and took charge of his clothing. Shortly after his wife left him he told me he intended to retire from active service and go to his home in Philadelphia & remain there. He asked me to go with him
and I agreed to do so.

559 To the fourth interrogatory: During all the time Major &
Mrs. Nickerson lived together his conduct and manner was kind and affectionate. He seemed to me to be a good husband and to try and satisfy his family. He always had a good table and seemed willing to provide everything that was wanted.

his
JOHN W. x CARPENTER.
mark.

Sworn and subscribed before me this 12th day of March, A. D. 1883.

HENRY PHILLIPS COLEMAN, *Examiner.*

560 *Decree.*

C. P. No. 4. June Term, 1883.

AZOR H. NICKERSON
vs.
EMMA C. NICKERSON. } No. 45.

And now, June 9, 1883, it is ordered, adjudged, and decreed that the order heretofore made in this case, as on the 31st day of March, 1883, making absolute the rule for divorce, be rescinded; that the decree of divorce *a vinculo matrimonii* entered in the case be, and the same is, absolutely annulled, vacated, and set aside for fraud in procuring the same; that the libel filed in this case be dismissed, and that all costs be paid by the libellant.

June 9, 1883.

M. R. T.

(Endorsed:) 45. J. 82. Nickerson *v.* Nickerson. C. P. No. 4. Filed June 9, '83. C. H. White.

561 THE COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the foregoing is a true copy of the docket entry, deposition of John W. Carpenter and decree in the cause wherein Azor H. Nickerson — plaintiff and Emma C. Nickerson, defendant, of June term, 1882, number 45, *of* full, entire, and complete as the same remains on file in court of common pleas No. 4 for the county of Philadelphia in the case there stated.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 19th day of May, in the year of our Lord one thousand eight hundred and eighty-five.

WILLIAM B. MANN,
Prothonotary.

COUNTY OF PHILADELPHIA, *ss:*

562 I, M. Russell Thayer, president judge of the court of common pleas No. 4 for the county of Philadelphia, do certify that the foregoing record and attestations made by William B. Mann, Esquire, prothonotary of the said court, whose name is thereto subscribed and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 19th day of May, in the year of our Lord one thousand eight hundred and eighty-five.

M. RUSSELL THAYER,
Pres't Judge.

COUNTY OF PHILADELPHIA, *ss:*

I, William B. Mann, Esquire, prothonotary of the several courts of common pleas, numbers one, two, three, and four, respectively, for the county of Philadelphia, do certify that the Honorable M. Russell Thayer, by whom the foregoing attestation was made and whose name is thereto subscribed, was, at the time of making thereof and still is, president judge of the court of common pleas No. 4 for the county of Philadelphia, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said courts this 19th day of May, in the year of our Lord one thousand eight hundred and eighty-five.

WILLIAM B. MANN,
Prothonotary.

563 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Jas. O. Clephane, examiner in chancery, do hereby certify that, in pursuance of the order & notice the foregoing deposition here taken down by me — reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

JAS. O. CLEPHANE,
Examiner in Chancery.

564 *Order Certifying Cause to the General Term, to be Heard in First Instance. Filed April* 22, 1886.

In the Supreme Court of the District of Columbia. In Equity.

EMMA C. D. NICKERSON, Compl't,
vs.
AZOR H. NICKERSON, WM. B. MATTHEWS, and LENA D. CARTER, Defendants. } No. 9027.

By consent of all parties to this cause, it is, this 22d day of April, A. D. 1886, by the court hereby ordered, adjudged, and decreed that this cause be heard in the general term of this court in the first instance,

and this cause is therefore certified to the said general term, to be there heard in the first instance.

By the court:

CHAS. P. JAMES, *J.*

565 *Proceedings in General Term.*

WASHINGTON, *April 26th*, 1886.

Proceedings before the supreme court of the District of Columbia, sitting in general term, on the fourth Monday, 26th day, of April, 1886.

Present: Chief Justice Cartter and Justices Cox, James and Merrick.

Decree in Gen. Term. Filed June 4, 1886.

FRIDAY, *June 4th*, 1886.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter; Justices James, Cox, and Merrick.

EMMA C. D. NICKERSON, Complainant,
vs.
AZOR H. NICKERSON, LENA D. CARTER, and WILLIAM B. MATTHEWS, Defendants. } In Equity. No. 9027.

This cause coming on to be heard in this court in the first instance, and having been fully argued by counsel for the respective parties and submitted to the court for its consideration, it is,
566 this 4th day of June, A. D. 1886, by the court, upon consideration thereof, hereby ordered, adjudged, and decreed that the bill of complaint in the above-entitled cause be, and the same is hereby, dismissed; and it is further ordered, adjudged, and decreed that the complainant pay all costs in this cause.

From this decree the complainant, Emma C. D. Nickerson, prays an appeal in open court to the Supreme Court of the United States, which is allowed, and the court fix the bond for appeal at and for the sum of five hundred dollars.

By the court:

D. K. CARTTER,
Chief Justice.

567 *Appeal bond to S. C. U. S. Filed Nov.* 5, 1886.

In the Supreme Court of the District of Columbia, the 5th day of November, 1886.

EMMA C. D. NICKERSON
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA D. CARTER. } No. 9027.

Know all men by these presents that we, Emma C. D. Nickerson and James W. Pumphrey, are bound unto the above-named Azor

H. Nickerson, William B. Matthews, and Lena D. Carter in the sum of five hundred dollars, to be paid to the said Azor H. Nickerson, William B. Matthews, and Lena D. Carter, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents

Sealed with our seals and dated this 5th day of November, 1886

Whereas the above-named Emma C. Dickerson has prosecuted her appeal to the Supreme Court of the United States to reverse the — rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Emma C. D. Nickerson shall prosecute her said appeal to effect and answer all damages and costs if -he shall fail to make good her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EMMA C. D. NICKERSON,
[SEAL.] By J. J. JOHNSON, *Her Solicitor.*
[SEAL.] JAS. W. PUMPHREY.

Sealed and delivered in presence of—
J. J. JOHNSON.

Approved Nov. 5, 1886.

D. K. CARTER,
Chief Justice.

Endorsed on cover: District of Columbia supreme court. No. 881. Emma C. D. Nickerson, appellant, *vs.* Azor H. Nickerson, William B. Matthews, and Lena D. Carter. Filed December 21, 1886.

127-668

127-668

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

EMMA C. D. NICKERSON, *Appellant*,
vs.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, AND LENA D. CARTER, *Appellees*.
No. 181.

Brief on the Part of Appellant.

J. J. JOHNSON,
W. W. WILSHIRE,
Counsel for Appellant.

R. O. Polkinhorn, Printer.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

EMMA C. D. NICKERSON,
Appellant,

vs.

AZOR H. NICKERSON,
WILLIAM B. MATTHEWS, and
LENA D. CARTER,
Appellees.

No. 881.

Brief on the part of Appellant.

STATEMENT OF THE CASE.

The appellant, the complainant below, filed her bill in the Supreme Court of the District of Columbia on the 31st day of May, 1884, expressly waiving answers under oath.

The bill (Record, p. 2) alleges that complainant was married to respondent, Azor H. Nickerson, on the 13th day of August, A. D. 1870, in the city of San Francisco, in the State of California, that while on a visit to the city of Portland, Oregon, in the Spring of the year 1870, complainant became engaged to be married to the said Nickerson, but

prior to the performance of the marriage the said Nickerson went with complainant and pointed out to her certain lots of ground of which he was the owner, situated in said city of Portland, the same being all of blocks numbered one hundred and forty-five (145) and one hundred and forty-six (146) in Conch's addition to said city of Portland, which said blocks of ground the said Nickerson promised and agreed with this complaint to convey to her after her marriage as a marriage portion or settlement for the benefit of herself and her children, should any be born of said marriage; and that he would erect thereon a suitable dwelling house for a home for herself and children; or that if she should so elect, they would sell said two blocks of land and re-invest the proceeds arising therefrom in other lots in said city of Portland, which would advance more rapidly in value, and that said re-investment should be sacredly held upon the trusts as heretofore stated, and that when the said re-investment should be disposed of, after having advanced to a value, (Record p. 3,) sufficient to pay for such a home, the proceeds should be applied exclusively to the purchase of such a home; that after the said engagement was entered, into complainant informed her mother, now Mrs. Celia D. Kenny, of said engagement; that as soon as her said mother learned of said engagement, she wrote from San Francisco to Portland, to complainant, and to her aunt, Mrs. Trevett, objecting to said engagement, and refusing her consent to the marriage; that upon receiving no satisfactory replies to her said letters, her mother visited Portland for the express purpose of breaking off said engagement and preventing said marriage; that after her mother

arrived in Portland, and before she had conversed with this complainant upon the subject of her engagement, the said Nickerson called with a buggy, and requested her mother to take a ride with him; and her mother consented; and he told her that he was the owner of certain blocks of ground in the said city of Portland; that he had promised and agreed with complainant, that if she would marry him, he would immediately after marriage convey the blocks of ground to complainant, as a marriage settlement, or would hold them as trustee for her separate benefit, and if they were at any time sold the proceeds should be invested in other property to be held in like manner for her separate benefit; and that when said blocks of ground, or any other lots purchased in lieu thereof should be finally sold, the proceeds arising therefrom should be invested in the name of and for the sole and separate benefit of complainant and her children; that upon the strength of these promises and representations, and relying upon the good faith of the said Nickerson, and in consideration thereof, and for no other reasons or considerations whatever, her mother withdrew her objections, and consented to the said marriage, which said marriage, without said consent, would not have taken place. This complainant, relying upon the love and affection of her husband, Nickerson, and having confidence in his good faith, in keeping and performing his agreement with her, and preferring that the property should be managed by said Nickerson, without the complications necessarily arising from the interposition of third parties, did not require that the lots should be conveyed to trustees for her benefit, but

permitted the title to remain in the said Nickerson. (Record, p. 4); that in pursuance of the agreement and understanding as to change of investment, on the 17th and 19th days of September, A. D. 1870, about a month only after marriage, the blocks of ground numbered 145 and 146 were sold by the said Nickerson and complainant, and in October and November following the proceeds thereof were invested, jointly with John S. Walker in lots three, four, five, six, seven, and eight, (3, 4, 5, 6, 7 & 8) in block twenty-four (24) in Couch's addition to the said city of Portland; the said last-mentioned lots were divided between Nickerson and the heirs of the said John S. Walker, and lots seven (7) and eight (8) and the north half of lot six (6) in said block twenty-four (24) on the 20th day of June, and the 30th day of October, 1878, were allotted to the said Nickerson, who held them, under the original deeds therefor, as her trustee, under the agreement, promise and consideration as set forth in the bill; that while this complainant was temporarily residing in the city of Dresden, in the Kingdom of Saxony, said Nickerson sold the hereinbefore described lots of ground in Portland, and forwarded to complainant deeds for the same, to be executed by her; that complainant, still relying upon the love and affection of her husband, and upon his good faith in keeping his agreement with her, and having every confidence in him, and perceiving from the consideration mentioned in said deeds, (which aggregated twelve thousand dollars), that the lots had sufficiently advanced in value to accomplish the object for which the lots had been purchased, and being deceived by the tenor of the letters received from the said Nickerson at the time

of and just preceding said sale, being fully persuaded that the said Nickerson was about finally to fully consummate the promise and agreement before set forth, complainant did on the 26th of November, 2nd of December, 1881, and on the 10th of January, 1882, execute said deeds and return them to her husband, Nickerson; and while so forwarding said executed deeds, she wrote to him a kind and affectionate letter, imploring him to be extremely cautious as to handling said money, and in making proper reinvestment; that (Record, p. 5) said Nickerson received from the several purchasers of said lots the purchase money; but instead of investing the trust fund and estate as he was legally and equitably bound to do, the said Nickerson, wrongfully and fraudulently, and with intent to deprive complaint of any and all benefit of said trust fund and estate, expended of said moneys the sum of eight thousand three hundred and eighty (3,380) dollars, in the purchase of a lot of ground with the improvements thereon, in the city of Washington aforesaid, known as part of lot number two (2) in square numbered one hundred and fourteen (114) beginning for the same at a certain point or stake fifty-seven feet and seven inches from the intersection of North P street with Twentieth (20) street West, and running South in a straight line, the width of said lot twenty feet, thence East sixty-four feet seven inches to Dupont Circle; thence North, along said circle twenty feet five inches to P street; thence West along said P street, sixty feet to the said stake at the beginning—that the said Nickerson, with the intent to defraud this complainant of any and all benefit arising from the investment of the said portion of the said trust

fund, instead of having the title to the said last described lot of ground and premises conveyed to himself, or to complainant or to trustees for her benefit, had the title conveyed to the appellee William B. Matthews, upon certain trusts, bearing date the 12th day of June, A. D. 1882.

The respondent, Nickerson, in and prior to the month of July, in the year 1880, represented to complainant that he was much in debt and that it would be in the line of economy if she would go to the continent of Europe, where living was cheap, and educational facilities plenty and reasonable, and reside while their daughter was being educated. She consented, and on the 10th day of July, A. D., 1880, she sailed from New York with her said daughter, her husband accompanying her to the steamer and parting from her, as the steamer left her dock, with every manifestation of love and affection; that after she departed, he proceeded to the city of Philadelphia, in the State of Pennsylvania, with the knowledge and consent of the said appellees, Lena Diller Carter and William B. Matthews, and rented rooms for the purpose of acquiring a pretended residence in said city; that on the 2nd day of May, A. D. 1882, he filed a libel in one of the courts of the said city against complainant for divorce, and by means of false and perjured testimony, obtained, on the 31st day of March, 1883, a pretended decree of divorce from complainant without her knowledge, collusion or consent; the complainant, as soon as she heard of these proceedings, immediately returned to this country, and at once instituted proceedings to set aside said pretended decree of divorce, and on the 9th day of June, 1883, did obtain from the court

by which said pretended decree had been entered, an order absolutely annulling and making void said pretended decree of divorce, because obtained by fraud and perjury ; that during the pendency of said fraudulent proceedings instituted by the said Nickerson, the appellee, Lena Diller Carter, moved into and occupied with the said Nickerson, the house and premises as before charged was purchased with the said trust funds, and they frequently discussed said divorce proceedings together and the hoped for consummation of the plans before that formed by them to be carried out after the said pretended decree of divorce should be granted ; and that when the said Nickerson was absent from the said city of Washington, or absent from said Lena Diller Carter, as well while he was in said city, they corresponded, and in said correspondence referred to and wrote to each other about their plans ; that one of the letters of the said Lena Diller Carter is dated the 5th day of June, 1882, just a month after said divorce proceedings were commenced and about ten months before said pretended decree of divorce was granted ; that on the 2d day of April, 1883, just two days after the granting of the said pretended decree of divorce, in further pursuance of said conspiracy, the said Nickerson and Lena Diller Carter went through the form of a pretended marriage ceremony in the city of Baltimore, in the State of Maryland ; that the said Nickerson procured the conveyance of the said part of said lot two in square one hundred and fourteen to be made to the said William B. Matthews, as trustee ; that said Nickerson, on the 31st day of May, 1883, in writing, directed the said Matthews to convey unto the said Lena Miller Carter, by the name of Lena D.

Nickerson, all his the said Nickerson's right, title, and estate in and to said part of lot two, in square one hundred and fourteen, and, upon the said 31st day of May, the said Matthews did execute to the said Lena Diller Carter, by the name of Lena Diller Nickerson, a pretended deed and conveyance to the said piece or parcel of ground and premises duly recorded among the land records of Washington county aforesaid, in Liber, No. 1042, at folio 428, &c.; that the said Nickerson, Matthews and Lena Diller Carter, at the time of the execution of said last mentioned deed, well knew that the prayer of this complainant, to set aside said pretended and fraudulent decree of divorce, would be granted, and that the deed from the said Matthews was made to attempt to defraud complainant of her right and interest in and to said trust fund and estate; that the said Nickerson, when he purchased and moved into the house, at the same time, moved into said house all the household furniture and kitchen utensils that had been used in common by the said Nickerson and complainant, prior to her said visit to Europe; that on the same 31st day of May, the said Nickerson made and executed to the said Lena Diller Carter, by the name of Lena Carter Nickerson, a bill of sale for all of said household and kitchen furniture and all of his personal property in the city of Washington of every kind and description; that said Matthews talked with and advised the said Nickerson, in all matters touching the bringing of the divorce suit in the city of Philadelphia, as well as in advising and the making and the preparation of the deed and bill of sale; that (Record, p. 8) as only a part of the said trust

fund has been invested in lot two, square one hundred and fourteen, and that the said Nickerson has no other property within the jurisdiction of this court, out of which the payment of the residue of said trust fund can be compelled, she is entitled to seek for such payment of said residue out of said furniture; that no legal, morai, or other valuable consideration ever passed from the said Lena Diller Carter to the said Nickerson, or the said Matthews, for said furniture or said part of lot two; that the said Lena Diller Carter was and is insolvent, and without any property whatever; that (Record, p. 9) there was born of said marriage between the said Azor H. Nickerson and herself one child, now living, named Florence, and now twelve years of age.

The answer of the principal defendant, A. H. Nickerson, is found on pages 26 to 37, inclusive, of the record.

This answer (Record 26) admits that he was at his own request retired from active service on the 28th of June, 1882, *and since the 2nd of June*, 1883, *he has been living in the Dominion of Canada for the benefit of his health.*

The answer (Record 27) denies the alleged promise that either before or after the marriage he ever verbally, or in writing, promised to complainant, or any one else, to reserve any portion of his property in Oregon, or elsewhere, as a marriage settlement to complainant, and says no conversation or any of like character or effect occurred between defendant and complainant, or any one else. The answer (Record 29) admits he sold the blocks specified in the bill, and purchased lots in the location and about the times stated. The answer (Record 29) admits that he sent

deeds for the lots specified, as situate in Portland, Oregon, for the complainant to execute, and she executed them voluntarily, but denies the proceeds were subject to an anti-nuptial agreement or trust. The answer (Record 31) admits he received, for the sale of the Portland, Oregon, lots, about the times specified, between ten and twelve thousand dollars. The answer further admits he purchased the property in controversy, at the time and for the amount specified. The answer (Record 32) further states that he never kept any separate bank accounts, or any account of any real or supposed trust fund, marriage portion or settlement; that the money received by him from the sale of the Oregon property, or elsewhere, was merged with other moneys. The answer (Record, p. 34) admits the bill of sale, and that he caused the property on Dupont Circle to be conveyed to Carter for her support and protection.

The answer concludes (Record, pp. 36 and 37) by pleading the statute of frauds as a bar to this cause.

The answer of the co-defendant (appellee here,) Lena Diller Carter is in the Record, pp. 38 to 46 inclusive, in which nearly every averment of the bill is denied simply upon information and belief. She says (Record, p. 38) it is not true at any time she entered into any conspiracy with the defendants (appellees here) Nickerson and Matthews for the purpose of defrauding complainant. She admits (Record, p. 41,) on the 31st of March, 1883, the appellee Nickerson obtained a divorce, and on the same day he informed her of the fact and spoke of his affection for her and urged her to marry him immediately, and she consented, and married him April 2, 1883.

That (Record, p. 43) on June 1, 1883, the appellee delivered to her the deed and bill of sale from the appellee Matthews. She (Record, p. 44) denies any letter exists, or that she ever wrote any letter that will give color to the allegation in the bill, or that any such correspondence was carried on between them, and concludes her answer (Record, pp. 45 and 46) by pleading the Statute of frauds as a bar to the bill.

On the 16th of December, 1885, by leave of the Court this same defendant filed an amended auswer, Record, pp. 49 to 52 inclusive pleading the statute of frauds of Oregon as a bar to this cause.

The answer of the co-defendant Matthews is found in the Record, pp. 52 to 60 inclusive. He denies the averments in the bill upon information and belief learned from his co-defendent Nickerson.

He (Record 56) admits that Nickerson, about the 2d of May, 1882, filed his libel against complainant for a divorce, and obtained a divorce on 31st March, 1883, and concludes his answer (Record 60) by pleading the statute of frauds as a bar to the bill of complaint.

On December 16, 1885, this defendant, by leave of the Court filed an amended answer, setting up as bar to this cause the statute of frauds of Oregon (Record, pp. 62, 63 and 64).

On the (Record, pp. 65 and 66) same day, and by leave of the Court, the defendant, Nickerson, filed an amended answer pleading in bar to this cause the statute of frauds of Oregon. Replication filed to answers. (Record 67.)

Considerable evidence was taken in the cause, but

a very small portion has any relevancy to this appeal.

Celia D. Kenny, mother of complainant, says, in substance, in March, 1870, the complainant visited her aunt in Portland, Oregon, when she met the defendant; that in May, 1870, she learned that the defendant had proposed marriage to complainant. After having written more than once to complainant, and her aunt objecting to this contemplated marriage, and receiving no satisfactory answer, she, early in June, 1870, went to Portland, Oregon, in order to inform herself of the condition of affairs regarding the engagement, and to insist on its being broken off; that on the same day of her arrival Nickerson called, and invited her to drive out with him, and, at four o'clock, he came with a horse and buggy and she went with him. He then informed her that complainant had told him her mother opposed the marriage; the witness told him her principal and controlling objection was that army officers, being subject to orders, were liable to changes from place to place, and in many instances had no local habitations for their families, which was a very serious objection. The defendant then informed witness that he was the owner of two blocks of town lots in Portland; that he had promised and agreed with the complainant, in the event of their marriage, to give these two blocks of land to her for the purpose of securing in her own right a permanent home, and as soon as these blocks could be disposed of for a sum sufficient to pay for a suitable and comfortable home for her he would dispose thereof and purchase and convey to complainant such a home. He also promised that

if witness so desired she should select the place where that home should be purchased, and that he would put the property in complainant's name. He further said that if these blocks that he had agreed to give complainant after her marriage did not sell for enough money to purchase a suitable home for complainant he would sell and reinvest in some other part where property would improve in value more rapidly, and so soon as he could realize a sufficient sum from the sales of this property for a home for complainant, he would carry out his promise—that these blocks he had promised to give to complainant after they were married. From these positive assurances from the defendant that complainant would be provided with a home of her own and in her own right witness withdrew her objection and consented to their marriage, for, although complainant was of age, she wanted the consent and approval of witness. After making the promise as above stated the defendant further stated to witness that he had told complainant that he would sell these blocks and buy with the money realized for her and hers elsewhere, other lots or property that would increase in value more rapidly, and that the blocks or the proceeds from the sales were to be wholly set apart to buying the home. He said complainant had seen the property and he had agreed and promised it or its proceeds to her and hers, and that she would have a permanent home of her own in her own name, regardless of army changes, adding: "Em knows all about this and has seen the lots. I have agreed to do this, and made her the same promises." (Record, pp. 118, 119.

Witness further testifies: She often met the de-

fendant after the marriage and he always kept her informed regarding the Portland property. He and complainant were at the house of witness in San Francisco in 1871, on their way to Arizona ; before that, in September, 1870, the two blocks Nos. 145 and 146 were sold and the proceeds had been re-invested in the purchase of lots 4, 5, 6, 7 and 8 in block 24, in a more desirable locality according to the plan and understanding that he would do so before marriage.

All these years witness was repeatedly consulted by defendant, as to where the promised home should be bought when the lots should reach a sum sufficient, and witness was requested to make a selection for the home in pursuance of the promise made to complainant. This conversation was again had at witness, house while on leave from Arizona. In 1873 he repeated that the agent thonght they would soon realize on the lots, and he wished to have a home selected and ready to buy, adding : "I want to and must get that home for Em, and her children." According, and as he had before his marriage, given witness to understand she should do, he asked her to go with them in a carriage to look at several residences, both in Oakland and San Francisco, with a view of buying a home as soon as the lots were realized upon. Two days were spent in that way.

The defendant returned to Arizona early in 1874, and, while there the second time, that witness and defendant exchanged a good many letters regarding the purchase with the avails of the lots he had given before marriage. We had now about decided about to locate in San Francisco, and in pursuance of his promise before marriage, witness was repertedly commissioned to look up the house. Witness went

to real estate offices time and time again, and took long walks to see the most desirable houses. Witness reported frequently to the defendant by letter all she could learn and get his views in return. But time passed, the property did not rise to a sufficient figure, nothing was done, and witness destroyed the letters in disgust.

In reply to 11th interrogatory, witness says the letters attached thereto are in the handwriting of the defendant. (Record, pp. 120, 121.)

While in Arizona, complainant was very ill; the defendant's kindness and attention to complainant drew witness' heart out towards him as never before or since. When spoken to about being fussy, and over particular in his watching over her, he replied, "I can't afford to lose Em, now; I want her to go to Washington with me. Em's a lady; she makes many friends."

In answer to interrogatory 17, where witness is asked if defendant ever complained of any domestic unhappiness, she answers: "Never but once, when he showed me a little blank book in which he kept the record of his gambling profits and losses." "This is the only trouble Em and I ever had," he said, turning over the leaves; "it is the skeleton in our closet." I told him he had better be careful how he went on. He laughed lightly, and left the room. This was my long visit to them in Omaha, Nebraska, in the winter of 1876, and spring of 1877." (Record, p. 122.)

On cross-examination and in answer to interrogatory 14, says the property relating to the marriage settlement originally consisted of lots in Portland, in Couch's addition, Nos. 145 and 146, which two

blocks, according to understanding and plan between defendant and myself, were sold on Sept. 17th and 19th 1870, in order that the proceeds might be better reinvested for a rise in the market values. The proceeds of that re-investment were to be sacredly devoted to the purchase of a home for complainant and her children. should any be born. In October and November, 1870, the reinvestment was made, in connection with Maj. John S. Walker, consisting of lots 3, 4, 5, 6, 7 and 8, in block 24, Couch's addition to city of Portland. Afterwards a division of the property was made when lots 7 and 8 and north half of 6 were, on June 20 and October 30, 1878, allotted to the defendant. (Record, p. 126.)

Emma C. Derby Nickerson (Record, p. 127) complainant. 37 years old. was married to defendant August 13, 1870, at San Francisco, California. My mother in no manner encouraged my marriage; on the contrary, at first she did not approve of it. My mother was at San Francisco, and I was on a visit to my aunt's, at Portland, Oregon. My mother wrote my aunt not to allow the affair to proceed further, if possible. She wrote me, objecting strongly to my making any marriage engagement with the defendant, giving her objections. At the time of my marriage the defendant owned two certain blocks of land in Portland, Oregon, in Couch's addition to the city of Portland. Previous to the marriage he promised to give me the two blocks of land referred to in my last answer, after we were married, for the purpose of providing me with a home of my own. Before our marriage, while walking out together, we went many times where this property is situated, and the defendant pointed out the property belong-

ing to him, consisting of all of blocks Nos. 145 and 146, in Portland, Oregon. This was in May and June, 1870. The defendant promised and agreed every time we spoke of the property, after our engagement, that it should be mine after our marriage, in consideration therefor as a marriage settlement and gift, that he would convey it to me for a home for me and mine. He stated, although the property was unimproved at that time (Record, p. 128), he would keep it until he could sell a block for a sum sufficient to build on the remaining block, and if the blocks did not increase rapidly in value it might be better to sell the whole as soon as he could get a purchaser to advance on the price he gave for it, and then reinvest the proceeds in other property, &c. When this last investment should advance in valne sufficient to enable him to sell to advantage, so as to enable him to buy me a home, he would then sell and give me my home, or if it did not advance sufficiently in value he would sell again and reinvest, and sell until the proceeds would be sufficient to invest in the purchase of a home for me and mine and which would then be my home and property as a gift from him and as a marriage settlement. He again and again, after we were engaged, referred to the settlement and always agreed to convey all of the blocks or the proceeds of the sale of the blocks to me.

Soon after my mother arrived in Portland, which was in the morning the defendant called and made arrangements to take her out driving ; on the return, she professed herself very well pleased with the interview. She asked me if I had seen the blocks of land owned by defendant. I told her I had, and

that they were to be mine after my marriage ; that the defendant had promised and agreed to give them to me for my home. The defendant told me that same evening that he had had a "lovely talk" with my mother, and that it was all arranged.

That in pursuance of this agreement and promise made between the defendant and myself, as well as with my mother, the two blocks of ground Nos. 145 and 146 were sold shortly after our marriage, on the 17th and 19th of September, 1870, and in the months of October and November, 1870, the same money was invested jointly with a Major Walker, in the purchase of lots 3 to 8 inclusive in block 24. After this a partition was made between the heirs of Walker and defendant, and lots 7 and 8 and the North half of lot 6 in block 24, were on the 20th of June and the 30th of October, 1879, allotted to the defendant. This property was situated on the river front where property had a tendency of increasing more rapidly than blocks 145 and 146. He said constantly and always that I might look forward to said property as some support and a home for myself and mine in case anything should happen to him.

The witness (Record, p. 131) further testifies : While at Dresden, in November 7, 1881, the defendant wrote me that Mr. Gillette, agent for Portland property, had sold the lot and a half of my Portland real estate for $7,000, and on the 9th, same month, sent a deed for me to execute, which I did. On the 18th of November he wrote again, inclosing another deed to said lots in Portland, requesting me to sign and acknowledge the same and return it to to him ; this second deed was for the last lot which brought $5,000. At this time I wrote him imploring him to

be very careful of the money the property had been sold for, and thinking, if perchance for some unexplained reason, he might not be ready to buy me the long promised home, I begged him to put the proceeds in U. S. Bonds. In this connection see exhibit E. C. D. N. No. 33, Record, p. 149, being a letter from the defendant, in which he says: "Mr. Gillette has sold *our* lot and a half in Portland for $7,000, leaving one yet to sell, for which he has been offered $4,200—my price being $5,000. Mrs. Williams is looking after it, and I shall sell if she says so." Also exhibit E. C. D. N. No. 23 (Record, p. 144,) in which he says: "So soon as I can get returns from any of the sales I have effected I shall proceed to send you what I owe you," &c.

Witness (Record, p. 132) says she is acquainted with the defendant, Lena D. Carter, she and her sister, at the invitation of the defendant, called on me, and at their first visit the defendant introduced them to me. The defendant would bring Lena D. Carter unexpectedly to dinner. At one time he invited her to spend several days with us, and she came with her sister.

On cross-examination (Record, p. 136) witness says: The defendant, upon learning of my return from Europe, in the spring of 1883, and that I had instituted proceedings in Philadelphia, to annul the decree of divorce he had fraudulently obtained against me, and seeing that I was about to succeed on the 31st of May, 1883, caused the real estate, No. 7, Dupont Circle, to be conveyed to the defendant, Carter, by the defendant, Matthews, and she is now in possession of it.

The deeds conveying blocks 145 and 146, on 17

September and 19th September, 1870, respectively, are found (Record, pp. 14 and 15.)

The deeds executed by complainant, while in Europe, are found in Record, pp. 21, 22, 23 and 24, showing that the conveyance for the north half of lot 6, in block 24, is dated November 9, 1881, and con. $2,000 ; the conveyance for lot 7, in block 24, is dated November 17, 1881, and con. $5,000 ; and the conveyance for lot 8, in block 24, is dated December 22, 1881, and con. $5,000.

To prove the charge in the bill, that the defendant, Nickerson, and his co-defendant, Lena D. Carter, were in correspondence pending the application for divorce, touching the subject-matter of said suit, and knowledge of the same on the part of said Carter, a letter (Record, p. 97) will be found written by said Carter, and marked Exhibit A., L. D. C. The witness (Record, p. 194) says when she wrote said letter she regarded herself engaged to be married to the defendant. This letter being full of endearing expressions of love, and overflowing with joy, hopes and happiness for the future, and being written prior to the decree and shortly after the institution of the proceedings for the divorce by the defendant. The evidence elicted on examination of the co-defendant, Matthews (Record, p. 171), shows the active part taken by him in facilitating and promoting the wishes of the defendant, Nickerson. All of which tends to prove the knowledge, aiding and abetting, and conspiracy charged in the bill against these two defendants to defraud and injure the complainant in her rights.

Thomas Sheridan (Record, p. 200) testifies that he sold the property in question, No. 7, Dupont

Circle, for $8,380 to the defendant, and that the check was on Middleton & Co.'s Bank.

The following records from the court in Philadelphia were filed as evidence: A duly certified copy of the petition of the defendant praying for a divorce from complainant, filed May 2d, 1882, in the Court of Common Pleas, No. 4, for the City and County of Philadelphia (Record, pp. 217 and 218. A duly certified copy of the decree made March 31, 1883, divorcing the defendant from the complainant (Record, pp. 206–207). A duly certified copy of the decree of June 9, 1883, absolutely annulling, vacating and setting aside the decree of March 31, 1883, for fraud in procuring the same (Record, p. 208). A duly certified copy of an indictment found by the Grand Inquest for the City and County of Philadelphia against said appellee, Nickerson, for perjury in obtaining the decree of divorce of March 31, 1883. (Record, pp. 210–211 *et seq.*)

Yet, in the face of all this evideuce, the appellees have the boldness to attempt to meet the same by denying the contract, of gift of settlement, the consideration therefor, and its performance by the complainant and the appellee, Nickerson, by the evidence of the appellees, Carter and Matthews, whose testimony is based entirely upon information and belief, ascertained solely by them in a conversation with the appellee, Nickerson, (Record, pp. 152, 166). Thus leaving the evidence for complainant uncontradicted, or even attempted to be denied by complainant's evidence, except that of the principal defendant, Nickerson, who, by his conduct, from the documentary evidence in the cause, has fitted

himself for a residence in Canada—the sanctuary of rascality from the States.

This cause being at issue and ready for hearing, was certified from the Supreme Court of the District of Columbia, sitting in equity, at a special term, to the same Court in General Term, pursuant to the act of Congress in such case made and provided. (Record, p. 226). And, thereupon, it was heard upon the bill, the exhibits, and the testimony taken thereunder by the said Court in General Term, and after the same had been heard and considered, the Court, un the 4th day of June, 1886, passed a final decree, dismissed the bill with costs, and from this decree the appellant (complainant below) prayed an appeal to the Supreme Court of the United States. (Record, p. 227.)

Assignment of Errors.

First. The Court erred in not granting to the complainant the relief prayed for in her bill.

Second. The Court erred in dismsssing the complainant's bill.

Points and Brief of Argument.

The bill filed in this cause is not for a specific performance of the contract, as it would seem to be understood by the counsel for the appellees ; there are no averments in the bill upon which to ask for a specific performance ; nor are there any prayers asking relief upon any such supposed grounds. (Record, pp. 1 to 9, inclusive.)

The bill plainly alleges what the original contract, or agreement was, the consideration to support that agreement or contract, and that although in parol the complainant fully and absolutely performed her part of the contract, and we shall hereafter maintain, and we think successfully, that the terms of the agreement has been substantially part performed by the defendant, Nickerson. *Armes* vs. *Bigelow*, 108 U. S., 632. A contract is "an agreement, upon sufficient consideration to do or not to do a particular thing." Blk. Com., 2d vol., p. 442. And, according to this definition, three things must concur to constitute a contract, first, there must be an *ageeament* (*i. e.* a mutual bargain or convention between two or more persons competent to contract); secondly, a *sufficient consideration;* and, thirdly, a thing to be done or omitted.

"Any benefit to the person making the promise, or any loss, trouble, or inconvenience to, or charge upon, the person to whom it is made, is a sufficient consideration to support a contract." Smith on Contracts, p. 141.

"In almost every State of this Union the rule is well settled that, in Equity, *part performance* takes a parol agreement out of the operation of the Statute of Frauds." 1 Lead. Cas. in Eq., Am. Note to *Lester* vs. *Foxcroft*, p. 567.

"Courts of Equity exercise their jurisdiction in decreeing specific performance of verbal agreements, where there has been part performance, for the purpose of preventing the great injustice which would arise from permitting a party to escape from the engagements he has entered into, upon the grounds of the statute of frauds, after the other party to the contract has, upon the faith of such engagement, expended his money, or otherwise acted in execution of

the agreement. Under such circumstances, *the Court will struggle to prevent such injustice from being effected;* and with this object, it has at the hearing, when the plaintiff has failed to establish the precise terms of the agreement, endeavored to collect, if it can, what the terms of it really were." (*Mundy* vs. *Jolliff*, 5 My. and Cr., p. 177.)

Again, the authorities teach that "it is enough that the Court can ascertain the terms of the promise, with *reasonable certainty*, from the whole evidence." (1 Lead. Cas. in Eq., Am. Note to *Lester* vs. *Foxcroft*, p. 572; *Parkhurst* vs. *Van Courtland*, 14 Johns., 31.

The allegation of the appellee, Nickerson, that the appellant deserted, or intended to desert him when she went to Europe, or at any other time, is shown by his letters to her a fews days after she sailed, on July 10, 1880, to May 31, 1882, (Exhibits E. C. D. N., Nos. 10 to 40, *Record* 136 to 151), to be false in every particular. His postscript to the letter of the appellant to her mother (Exhibit E. C. D. M., No. 8, Rec. 136), in which he (Nickerson) said "*Had to change str., and they go a week earlier—July 10th inst.*," shows that she went abroad with his consent and approbation, and not as a deserting wife. All of his letters to her after she sailed are full of the most affectionate expressions of a husband to a wife, which are totally inconsistent with the theory of desertion. The last one of these (Exhibit E. C. D. N., No. 40; Rec., 151,) bears date May 31st, 1882, *thirty* days after he had commenced his proceedings in Philadelphia to obtain a decree of divorce from her. There is nothing in that letter to indicate or to arouse her suspicions that he was writing to a wife who had

deserted him nearly two years before. On the contrary, its tone was assuring to her that he entertained none but those feelings of care and solicitude which a fond and dutiful husband should manifest towards his wife, though he was then secretly and wickedly, so far as complainant was concerned, endeavoring, not only to cast her off in a foreign land, friendless but to defraud her out of rights which he had solemnly agreed to secure as a marriage settlement for her and her, or their, little daughter, and confer the same upon another, whom, under the facts and circumstances disclosed in the testimony, is entitled to no other emotion than scorn and contempt of all good people for the part she has taken in endeavoring to blight the future hopes of complainant by alienating the affections of her husband.

These letters accomplished more. They fully corroborate the testimony of both the appellant and that of her mother on all subjects to which they relate. They flatly contradict the *volunteer* statements of both of the appellees Carter and Mathews in their answers, and also in their testimony in reference to the desertion by the appellant and of her bad conduct towards, the appellee, Nickerson. These letters are not, like the statements of Carter and Mathews, mere heresay evidence, but are the statements of appellee, Nickerson, himself, over his own signature.

While we do not deem it absolutely essential to the proper and successful presentation of this cause, yet we deem it prudent to discuss briefly the statute of frauds; part performance, what constitutes performance; and, lastly, that the contract and agreement in this cause was fully performed and exe-

cuted by the parties thereto, and hence taken out of the statute of frauds.

Statute of Frauds.

II.

We contend that the agreement, as set forth in the bill in this cause, and as shown from the testimony, before referred to, is taken out of the statute of frauds.

The authorities all agree that fraud will, in equity, break through any law, written or unwritten, not penal or political in its character, which affect only the rights of persons. *Reed's Stat. of Frauds*, 175.

Courts of equity hold that, *notwithstanding* the express language of the statute of frauds, a case may may be taken out of its operation *by fraud*, or by a *parol* agreement and part performance. *Fry on Spec. Perfor.*, Sec 375, Ed. 1858.

Brown on Statute of Frauds (sec. 438) says:

"It is, indeed, often said that as the statute itself was *intended* for the *suppression* of frauds, it is but *subserving more effectually the ends of its enactment* for courts of equity to interpose, and prevent it from being made, *by the liberty which it affords a party of protecting himself under its cover, the very* ENGINE *and* INSTRUMENT *of fraud.* * * * The correct view appears to be that equity *will at all times* lend its aid to *defeat fraud*, notwithstanding the statute of Frauds."

From soon after the enactment of the statute of frauds by the Parliament of England down to the present

time, both in that and in this country, the highest and most distinguished equity tribunals, in cases like this, have held that the agreement was taken out of the statute of frauds.

In England it has been held that fraud was an exception to the statute of frauds. 1 *P. Wm.*, 618; *Eq. Cas. Abr.*, 19; *Beaumont* vs. *Carter*, 2 Atk., 49; *Scott* vs. *Scott*, 1 Cox Ch., 366; *Redmond* vs. *Redmond*, 1 Vern., 348; and *Nevelle* vs. *Nevelle*, 1 Bro. Ch. Cas., 543, and cases cited.

In discussing ante-nuptial agreements, the Lord Chancellor, in *Hammersley* vs. *De Biel*, 12 C. & Fin., 45 (at page 78), said:

"That if a party holds out inducements to another to celebrate a marriage, and holds them out deliberately, and plainly, and the other party *consents* and celebrates the marriage in *consequence* of them, if he had *good reason* to expect that it was *intended* that he should have the *benefit* of the proposals so held out, a court of equity *will take care* that he is *not* disappointed, and will *give effect* to the proposals."

On appeal to the House of Lords, the ruling in that case was affirmed, Lord CAMPBELL remarking that—

"Under the circumstances, it seems to me that the decree of the Master of the Rolls, affirmed by the Lord Chancellor, *is perfectly according to the doctrine which has hitherto prevailed in courts of equity, and does not extend it;* and I think that we should *infringe* on a very *useful* and *necessary* rule if we were *not* to hold in this case that the contract is *binding*."

The doctrine held in *Hammersly* vs. *De Biel*, was reaffirmed, in even stronger terms, by the House of

Lords in the case of *Mannsell* vs. *White* (4 H. L. Cas., 1039).

In *Surcome* v. *Penninger* (3 De Gex, M. & G., 571), marriage was made the *condition* of the promise, and was entered into *on account thereof*. There the antenuptial promise was held to be *valid* and *binding*. See, also, *Brakworth* v. *Young*, 4 Drew. 1, and *Jordon* v. *Money*, 5 H. L. Cas., 185, where the same doctrine was discussed and held. See, also, *Floyd* v. *Buckland*, 1 Freem., 268.

A representation made by one party for the purpose of influencing another to solemnize a marriage, and the latter, *relying* upon such representations, solemnizes the marriage, will be sufficient to entitle him to the assistance of a court of equity for the purpose of realizing such representations. *Crooks* v. *Mascall*, 2 Vern, 200; *Wanckford* v. *Fatherly*, Freem. Ch. (2d Ed.) 201; *Luder* v. *Anstey*, 4 Ves. 501; *Hodgson* vs. *Hutchinson*, 5 Vin. Abr. 522; and *Williams* v. *Williams*, 37 L. J., 854.

In *William* vs. *Williams* the Vice Chancellor held that a parol agreement, made to induce the solemnization of a marriage, was a *valid* contract and would be *enforced* in equity.

In *Wanckford* vs. *Fatherty*, the bill was for a marriage portion, promised by the father upon the marriage of his daughter; there was no note of agreement in writing signed by the defendant ant for the payment. The promise was enforced, and upon appeal to the House of Lords the decree was affirmed. Attention is also invited to the note of the reporter in that case. Freem. Ch. 201, taken from *Reg. Lib.* 1694, *B. fol.* 128.

In *Caton* vs. *Caton*, 35 L. J. Ch. 292, although the Lord Chancellor dismissed the bill, he reaffirmed the principle that where one of two contracting parties had been induced to alter his position on the faith of the contract, a court of equity will protect him.

The conduct of either of the parties to an ante-nuptial agreement, after the marriage which operates as a fraud upon the rights of the other under the agreement, will take the contract out of the statute. *Taylor* vs. *Beach*, 1 Ves. sen. 279. In that case Lord Hardwick, distinguishing the cases of parol ante-nuptial agreement that were, from those that were not, within the statute said: "But here are strong circumstances, *subsequent* to the agreement, which go a great way to take it out of the statute; and if the statute is suffered to be pleaded to the discovery even of a *parol* agreement in such a case, it would be very *mischievous*."

We think we risk nothing in saying that there is not to be found in the history of adjudicated cases, a case where the *subsequent* circumstances were stronger or more colored with a systematic scheme of fraud; and more *wicked*, cruel and inhuman, than is exhibited in the conduct of the defendant Nickerson towards the complainant, as disclosed by the testimony in the record. Certainly no case has ever appealed as strongly to a court of equity for redress and relief as this case presents.

It seems to be the settled doctrine in England that in Courts of Equity the statute of frauds will not be allowed to become the *instrument* of fraud for *designing* persons, *Prole* vs. *Loady*, 2 Giff., 20; citing *Ludes* vs. *Austery*, where a mere *suggestion* for consideration followed by marriage was held to be bind-

ing. Where there is a parol agreement entered into in good faith, *parol* evidence will be admitted to establish it in a Court of Equity. *Walker* vs. *Walker*, 2 Atk., 98.

A fraudulent use of the statute of frauds will not be allowed. *Measter* vs. *Gillispie*, 11 Ves., 627–8. In that case, the LORD CHANCELLOR said :

"One instance is the case of instructions upon a *treaty of marriage*, * * * which, *not* appearing by the contents of the conveyance, can be proved *aliunde*."

Where a father, after the marriage engagement of his daughter, assured her intended husband that he intended to secure the whole of his estate to his daughter after his death, it was held "that the above expressions of intention, on the part of the testator, amounted to a contract to settle the whole estate of which he died, seized and passed to the plaintiff in *strict* settlement." *Coverdale* vs. *Eastwood*, L. R., 15 Eq., 122.

Brown, on the Statute of Frauds, says :

"A simple illustration of the rule, that when the Statute of Frauds has been used as a cover to a fraud, *equity will relieve* against the fraud, *notwithstanding* its provisions, is reported by Viner." Brown Stat. of Frauds, Ed. 3d, Sec. 441. Citing 5 *Vin. Abr.*, 522, 524. Also the American cases of *Crocker* vs. *Higgins*, 7 Con., 342 ; *Arnold* vs. *Cord.*, 16 Ind., 177 ; *Mc-Burney* vs. *Willman*, 43 Barb., (N. Y.) 390.

In this country, courts of equity have kept pace with that larger reason flowing from the advance-

ment of the enlightened civilization of the age. Even the rulings of the English Courts of Equity, sustaining ante-nuptial agreements, have been enlarged and extended so as to defeat attempted frauds upon rights created by such agreements.

Illustrative of this are the cases of *Durham* vs. *Taylor*, 29 Ga., 166; *Glass* vs. *Hulbert*, 102 Mass., 24; *Hatcher* vs. *Robertson*, 4 Strob. Ch., 179; *Sanford* vs *Atwood*, 44 Conn., 141; *Andrews* vs. *Jones*, 10 Ala., 400; *Petty* vs. *Petty*, 4 B. Moner., 215; *Southerland* vs. *Southerland*, 5 Bush., 591; *Hafer* vs. *Hafer*, 33 Kan., 449; and *Greene* vs. *Greene*, *et. al.*, 34 Kan., 740.

In the case of *Durham* vs. *Taylor*, 29 Ga., 166, a plea of the Statute of Frauds was interposed to defeat an ante-nuptial agreement. The Court said:

"And is there any good reason why marriage should not be considered a part performance of marriage contracts, so as to take them—the contract—out of the statute? The reason assigned in *Monticute* vs. *Maxwell*, (1 P. Wm's., 618) is that, *until* the marriage, the promise is *not within* the statute *at all*. True, the words of the statute are, 'upon consideration of marriage,' not of a promise to marry. * * The consideration of an ante-nuptial agreement is a promise *to marry*. That remains the consideration after the marriage. The marriage is the *performance* of the *promise*, not its consideration. By the marriage, then, the agreement *does not cease* to be an agreement of *a promise* of marriage, and become an agreement in consideration *of* marriage. How, then, can the marriage draw the agreement *within* the statute, if it was *not* there before? * * * What say justice and equity? Do they not say that these cases of marriage contracts are often the very ones

which marriage, as *part* performance, ought to take out of the statute? In the other cases, the other party, if he has parted with his property, and the contract fails, that property is gone; the moment the contract gets out of the way, the marital right of the husband steps in and swallows it all up at a mouthful. Nay, all her rights are gone. She has become a married woman, and thus has merged into her husband; and his conduct in repudiating the contract is not even a ground to her for demanding a divorce. Indeed, a divorce, if she could obtain one, could not restore her to *all* she was, if it could to all *she had*, before the marriage. Great and irreparable is the mischief, if the contract be held void. I, myself, therefore, much doubt whether, in cases of this kind, marriage is not such a part performance as takes them out of the statute." *Riley* vs. *Riley*, 25 Conn., 154.

That learned judge cited, and quoted from, the following authorities in support of that opinion: Namely, *Brown on Stat. of Frauds*, 3d Ed., sec. 459; *White and Tudor, Eq. Ca.*, 663; *Pember* vs. *Matthews*, 1 Bro. Ch. Ca., 52; *Cookes* vs. *Mascall*, 2 Vern., 200; and *Monticute* vs. *Maxwell*, 1 Eq. Ca. Abr., 19.

Right in line, and in consonance with the doctrine announced, is *Glass* vs. *Hulbert*, 102 Mass., 24. The Supreme Court of that State said, "the *fraud* most commonly treated as taking an agreement out of the Statute of Frauds, is that which consists in setting up the statute against its performance, after the other party has been induced to make expenditures, or *a change of* situation in regard to the subject-matter of the agreement, or upon the supposition that it was to be carried into execution, so that the refusal to complete the execution of the agreement is not merely a denial of rights, which it was in-

tended to confer, but the infliction of an unjust and unconscientious injury and loss. In such case the party is held, by force of his acts or silent acquiescence, which have misled the other to his harm, to be estopped from setting up the Statute of Frauds." And on page 39, that court said:

"The cases most frequently referred to are those arising out of agreements for marriage settlements. In such cases the marriage, although not regarded as a part performance of the agreement for marriage settlement, *is such an irretrievable change of situation* that, if procured by artifice upon the *faith* that the settlement had been, or that it *would be executed*, the other party is held to make good the agreement, and not permitted to defeat it by pleading the statute."

The Supreme Court of South Carolina, in *Hatcher* vs. *Robertson* (4 Strob, ch. 179) the learned judge delivering the opinion, (p. 182) said:

"I should not hesitate to set up and enforce an *ante-nuptial* agreement, founded on the consideration of marriage, though resting *in parol* merely, provided it was clearly and satisfactorily established by proof, * * * not only against the husband, his heirs at law, devisees, legatees, distributees, or any other person claiming from or through him by *volunteer conveyance*, but even against a purchaser for valuable consideration, provided he had notice of the wife's equity."

The Supreme Court of Connecticut, in the case of *Sanford* vs. *Atwood* (44 Conn. 141) sustained a parol ante-nuptial agreement that the wife should after marriage retain the management and control of her

property, and be entitled to its use and proceeds, and allowed *parol evidence* to be introduced to establish the agreement.

In *Andrews & Bro.* vs. *Jones* (10 Ala., 400) and *Dyerst Remerschneider et al.* (32 N. Y. 629) the principle contended for by the appellant here is sustained.

The Supreme Court of Kentucky, in *Petty* vs. *Petty* (4 B. Mon. 215) where the wife charged that her husband, being much the elder and in good circumstances, as an inducement to the *contract of marriage* and as a means of providing for her support in the event of his death, before their marriage, promised her that if she would marry him he would immediately after the marriage make her a deed of settlement, &c. A few days after the marriage, her husband disclosed to her for the first time that he had been induced by certain parties to make over his property before his marriage. In passing upon the question thus raised, the court said:

"The wife has been fraudulently deprived of the right of dower by the deeds in question; to that extent *at least* of this interest, *if no further*, their execution was a fraud upon her and ought not to stand."

In *Southerland* vs. *Southerland's Adm'r*, (5 Bush., 591) it was held that, "As between parties, an oral ante-nuptial contract that neither party should claim or interfere with the property of the other, any more than if they were not married, is unquestionable."

In Kansas it is held "That ante-nuptial contracts providing a different rule than the one prescribed by

law for settling their property rights, entered into by persons competent to contract, and which, considering the circumstances of the parties at the time of making the same, is reasonable and just in its provisions, should be upheld and enforced." *Hafer* v. *Hafer*, 33 Kan., 449.

In Lutz's Appeal, 95 Pa., 277, it was held that in that State *parol* ante-nuptial contracts are vaild. The court said. * * * And that, *on every principle of equitable stoppel*, the husband's mouth ought to be shut from *interposing an objection* to its full enenforcement."

In *Jenkins* v. *Eldridge*, 3 Story, C. C., 181, Justice Story said (p. 291), if a man promises, upon his marriage, to make a settlement upon his wife, and he, acting in bad faith after the marriage, refuses to execute the settlement, equity ought to compel him to do so.

The case of *Green* v. *Green et al.*, 34 Kan., 740, is one directly in point, and fully sustains the agreement in this case. There the wife, prior to the marriage, in order to induce her intended husband (Greene) to enter into the marriage engagement with her, represented to him that she was the owner of a farm which was ample to support them both, and which, if he would marry her, she agreed to dedicate to their joint support after their marriage. The husband, relying upon that agreement, entered into the mutual agreement with her to marry, and the marriage was afterwards solemnized. The day before the marriage, the wife, without the knowledge of Green, conveyed the farm by deed to her daughters by a former husband. The court held that the *marriage*, in pursuance of the former parol agree-

ment *to marry*, was a sufficient consideration to support the ante-nuptial agreement to dedicate the farm to their joint support; and that the conveyance of the farm by the wife was a fraud upon Green, against which a court of equity will relieve.

In Vermont it is held that, even a contract, "in consideration of marriage," the lack of a writing does not render the contract *for marriage* void. The statute only affects the matter of evidence by which a contract may be proven.

In *Porter* vs. *Allen*, 54 Ga., 621, the court sustained a parol gift to a wife by her husband, nothwithstanding the Statute of Frauds, and decreed a specific performance of the agreement of gift.

When induced by a promise, one enters into marriage, the contract is performed, and he can recover on the representations against the promiser. *Ogden* vs. *Ogden*, 1 Bland., 287.

In *Lowe* vs. *Bryant*, 30 Ga., 528, there was a *parol* treaty of marriage by which the husband agreed that the property he should receive by her on marriage, he would give to her and the children of the marriage by will. The agreement was enforced. The same doctrine was sustained in *Resor* vs. *Resor*, 9 Ind., 347.

In *Cole* vs. *Cole*, 41 Md., 301. A verbally agreed with B to execute a mortgage on certain land to secure a loan of money; the court held that A was bound in equity and good conscience to perform his part of the agreement; * * * and the Statute of Frauds, if it had been pleaded, would have presented *no obstacle* to the enforcement of this *equitable principle.*

In an early case in Virginia (*Chichester* vs. *Vass's Adm'r*, 1 Mumf., 98), a verbal promise of a father to the intended husband of his daughter, that, if the marriage took place, he would make certain provisions for the daughter. The court held that the promise of the father, the marriage having been had, was binding on him, and enforced the same.

In *Crane* vs. *Crane*, 4 Md., 316, where it was sought to enforce an ante-nuptial agreement, in respect to the wife's personal property, notwithstanding the Statute of Frauds, the court held that the case was taken out of the statute and sustained the agreement.

Bishop's Law of Married Women, Vol. 1 (sec. 775), says:

"If a man and woman propose *to marry*, they find *in the marriage itself*, a consideration to sustain any sort of *pecuniary* arrangements which they *choose to make*." Citing, 4 Kent. Com., 464–5; and *Johnson* vs. *Dillard*, 1 Bay., 232–3.

Mr. Bishop also says (sec. 810, vol. 1), that "Ante-nuptial *parol* agreement is a valid contract *between the parties*."

Marriage is a valuable consideration. Therefore executory agreements made in contemplation of marriage, will be enforced if the marriage *actually* takes place. *Perry on Trusts.*, Sec. 110, citing *Dugan* v. *Getting*, Gill, 38; *Gough* v. *Crane*, 3 Md. Ch., 119, also, 4 Md., 316, and *Ryan* v. *Tomlinson*, 39 Cal., 639. See 3 Gill, 157.

Bishop on Law of Married Women, Vol. 1, sec. 807, says:

"Incautious persons have sometimes, not looking at the exact words of the statute, supposed that if an agreement is founded on the consideration of marriage, and is not in writing, it is therefore *void*. But that is not what the statute says. It simply says, that 'no action shall be brought whereby to charge any person upon this parol agreement.' For example, if the parol agreement has been executed, the rights of property acquired under it are as secure as if the contract had been in writing and duly signed."

Part Performance.

IV.

Fry on Specific Performance says in substance (p. 177) Ed. 1858: "The cases of parol agreements which courts of equity will enforce on the ground of part performance, *notwithstanding* the statute of frauds, are where *fraud* and *injustice* would result from allowing one party to *refuse* to perform his part of the contract. Citing *Buckmaster* vs. *Harrop*, 7 Ves., 346; *Railway Co.* vs. *Winter*, Cr. & Ph., 57; and *Lindsay* v. *Railway Co.*, 10 Ha., 664 and 700.

The case under consideration comes directly within this wise, just and equitable doctrine. The appellant here, relying upon the promises and assurances made to her by the appellee, Nickerson, as the inducement to her to marry him, did solemnize the marriage. The refusal of the appellee, Nickerson, to perform his part of that agreement was

not only a *fraud* upon and gross injustice to her, but, under the circumstances of his conduct towards her in respect to his agreement with her, and his duty to her, as shown by the testimony contained in the record, was malicious and wickedly so.

The same equitable principle upon which courts of equity will enforce specific performance of a contract, *notwithstanding* the statute of frauds, are equally applicable for the enforcement of parol ante-nuptial agreements.

Fry Ed. 1858 (p. 277, says:

"In respect of marriage contract an exception to the general principle before us exists, for the *obvious* reason that the parties to the contract are not the *only parties having an interest in the subject*, but the contract is made by them on *behalf* of the issue of the marriage." See authorities there cited.

It is shown by the testimony (Record, pp. 118, 119, 127, 128, and 129) that the agreement on the part of the appellee, Nickerson, was to dedicate the land therein referred to, exclusively to the purpose of ultimately securing a permanent home forthe appellant and the issue of the marriage. It is admitted in the answer of appellee, Nickerson, that there is issue of that marriage living—a daughter now about fifteen years old. (Record, p. 35.)

In the case of *Williams* vs. *Morris* (95 U. S., 456.) this court said:

"When one of two contracting parties has been induced, or allowed to alter his *position* on the *faith*

of such contract, to such an extent that it be fraud on the part of the other party to set up its invalidity, courts of equity hold that, clear proof of the contract, and part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such that they are properly referrable to the parol agreement."

The same doctrine was held in *Purcell* vs. *Miner*, 4 Wall., 513, and, also, in *Neale* vs. *Neale*, 9 Wall., 1. There the court said :

"Courts of Equity, whether wisely or not, it is too late now to enquire, have slipped in and *relaxed the rigidity of the rule* requiring contracts concerning real estate to be in writing, and hold that part performance removes the bar of the statute, on the ground that *it is a fraud* for the vendor to insist on the *absence* of a written agreement."

We think it will not be seriously contended that the agreement in the case at bar, under all the circumstances disclosed in the testimony, is not entitled to the same relaxation of rigid rulings upon the Statute of Frauds, as a contract concerning real estate.

In *Neale* vs. *Neale*, *supra*, this court also said : "Damages will not compensate for the breach of this contract, *nor answer the intention of the parties*." We think the court will not fail to discover that, in this case, neither, can damages, nor the relief sought by the bill, compensate the appellant for the wrong and injury done to her by all of the appellees, and especially by Nickerson himself, or answer the intention of the parties in entering into so important an agreement as they made ; one so eminently proper

and commendable as that of providing for the wife and the issue of their marriage.

As we have shown, the ground upon which courts of equity hold that part performance will take parol agreements out of the Statute of Frauds, is, that it is a fraud in one party to such an agreement to refuse to perform what he has solemnly agreed to do, after the other party has, on the entire faith of the agreement, performed on his part. On this ground it has been held that a contract, *made in consideration of marriage*, is taken out of the statute, when partly performed. *Bradley* vs. *Saddler*, 54 Ga., 682; *Houghton* vs. *Houghton*, 14 Ind., 505; *Childs* vs. *Pearl*, 43 Vt., 224; *Tinkler* vs. *Swayne*, 74 Ind., 576; *Sweet* vs. *Mitchell*, 15 Wis., 665; *Hussey* vs. *Castle*, 41 Cali., 242; *Houston* vs. *Towndsen*, 1 Del. Ch., 422, and 38 Md., 298.

What Constitutes Part Performance.

V.

It seems that in England doubt has been expressed as to the soundness of the rulings by courts of equity that marriage itself was not a part performance of a parol ante-nuptial agreement, sufficient to take it out of the operation of the Statute of Frauds.

In the case of *Coles* vs. *Pilkinton*, (19 L. R. Eq. Cas. 174) the Vice Chancellor, in following the ruling in *Caton* vs. *Caton*, (where the court seemed to travel out of the record to say that marriage was not part performance) said:

"*It is difficult to say why this should be the case.*"

And in *Jeston* vs. *Key*, (6 L. R. Ch. Appls. 610) where one of the parties after the marriage refused to perform the agreement, the court held :

"That it was no answer to the husband's claim that he had refused to perform his part of the agreement, *inasmuch as the contract between the parties had been partly performed by the marriage.*"

In some of the States, where the clause of the English statute in respect to marriage contracts prevails, courts of equity have held, substantially, that marriage is part performance of an ante-nuptial agreement, sufficient to take it out of the statute of frauds.

In Kansas, in the case of *Hafer* vs. *Hafer*, 33 Kan., 449, the court, in sustaining an ante-nuptial parol agreement for settlement, said :

"That ante-nuptial contracts, providing a different rule than the one prescribed by law for settling their property rights, * * * should be upheld and enforced."

And in *Greene* vs. *Greene, et. al.*, 34 Kan., 740, the ccurt, re-affirming the ruling in *Hafer* vs. *Hafer*, said : "And we *further decide* that *marriage* is a *good* and *sufficient consideration* to sustain an ante-nuptial parol contract."

In Georgia, in the case of *Durham* vs. *Taylor*, 29 Ga., 166, where this subject is fully and, we think, ably discussed, this doctrine was affirmed. The learned judge, delivering the opinion, said: "*I, myself, therefore, much doubt whether, in cases of this kind, marriage is not such* PART PERFORMANCE *as*

to take them out of the statute." The same doctrine is held in *Porter* vs. *Allen*, 54 Ga., 621; also, 30 Ga., 528.

In Massachusetts, in *Glass* vs. *Hulburt*, 102 Mass., 24, the court there also discussed this question and said, in concluding:

"The cases most frequently referred to are those arising out of agreements for marriage settlements. In such cases, the marriage, although not regarded as part performance of an agreement for marriage, *is such an irretrievable change of situation* that, if procured by artifice upon the faith that the settlement had been, or *would be executed*, the other party is held *to make good the agreement*, and *not permitted* to defeat it by pleading the statute."

In South Carolina, in the case of *Hatcher* vs. *Robertson*, 4 Strob., Ch. 179, the judge, delivering the opinion, said:

"I should not hesitate *to set up and enforce* an ante-nuptial agreement founded on the *consideration of marriage*, *though resting in parol merely*; provided, it was clearly and satisfactorily established by proof."

In Connecticut, in *Sanford* vs. *Atwood*, 44 Con., 141, the court sustained a parol ante-nuptial agreement that the wife should, after marriage, retain the management and control of her property, and be entitled to its use and proceeds, and *allowed parol evidence* to be introduced to *establish the agreement.*

In Virginia, in the early case of *Chichester* vs. *Vass's Adm'r*, on a parol agreement, in consideration of marriage, it was held that the marriage was part performance of the agreement.

In Maryland the same doctrine was held in *Crane* v. *Crane*, 4 Md., 316, and *Cole* v. *Cole*, 41 Md., 301.

Attention is invited to the following cases, in States having exceptions to the marriage clause of their statutes of frauds, substantially the same as that of the State of Oregon: *Andrews Bro's* v. *Jones*, 10 Ala., 400; *Petty* v. *Petty*, 4 B. More., (Ky.) 215; *Southerland* v. *Southerland Admr.*, 5 Bush., 591; *Dyerst* v. *Remerschneider*, 32 N. Y., 629; *Hussey* v. *Castle*, 41 Cali., 422, and specially to case of *Coror* v. *Stanley*, 65 Cali., 183, where it was distinctly held that, even when one of the parties to the agreement *to marry*, without cause, refused to solemnize the marriage, the other party being ready and willing to do so, the contract to marry should be enforced.

Thus it is seen that some of the courts of equity of this country have held that marriage alone is a part performance sufficient to take an ante-nuptial agreement out of the statute of frauds. Particularly should the marriage in this case take the agreement to provide a home for the appellant and the *issue of that marriage* out of the statute.

The object of the statute of frauds being to prevent the mischief arising from the resort to parol evidence to prove the existence and terms of the agreements therein made, it would seem that it was the intention and purpose of the legislature, as a means of preventing fraud by perjury, to prescribe *only* a rule to secure certainty as to the evidence to be employed to establish such agreements.

From the words of the statute there could seem to be no other purpose in its enactment. We venture the assumption that it was upon that view of the statute, courts of equity have held that *part per-*

formance of a parol agreement dispelled the suspicion of fraud raised by the statute, and remove the bar to proving the same by parol testimony.

As we have seen, courts of equity will enforce *parol* ante-nuptial agreements, *notwithstanding* the statute of frauds, on the ground of fraud *per se*. The ground upon which these courts will enforce such agreements upon evidence of part performance, is that it is a *fraud* for one of the parties to the agreement to refuse to perform his part, after the other party, *relying on the agreement*, has performed his part.

This last ground for the interposition by courts of equity, finds no support in the language of the statute of frauds. It rests solely on the doctrine that, in every case where the facts and circumstances in support of the agreement are *clearly* and *satisfactorily* established by the testimony of intelligent and reputable witnesses, and it is shown that a *fraud* has been practiced in procuring the agreement, or that a fraud is about to be perpetrated by one of the parties upon another to the agreement, a court of equity will interfere and grant appropriate relief.

This doctrine is founded on the principles of right, natural justice, and fair dealing between man and man, and cuts its way "through any law written or unwritten," which has, for its object, *only* the determination of individual rights. It is now settled that marriage is not only a *valuable* consideration to *vest* a right or *create* an estate, but it is regarded as the *highest* known to the law. It is said to be one of the Holy Ordinances of God. It is sanctioned and protected by the laws of man as essential to society and good morals. It seems difficult, then, to under-

stand upon what principle it can be said that so important an act as that of marriage itself is less meritorious, as an act of *part performance* of an antenuptial agreement made as perliminary to its consummation.

In Ohio, in *Wilber* vs. *Paine*, 1 Hamm., 117, the court, in making the application of this view of the Statute of Frauds, said :

"In giving a construction to any statute, the court must consider *its policy*, and give it *such* an interpretation as may appear best calculated to advance its object, by effectuating the design of the legislature. The great object of the statute in question is clearly expressed in the title prefixed to it. It is not, therefore, to be presumed that it was *intended*, in any instance, to encourage fraud ; and we may infer that *any* construction, which would have a *tendency* to do so, would *counteract the design* of the legislature by *advancing the mischief* intended to be prevented. Most of the decisions restricting the statute of 29th Charles II., and taking out of its operation that which might be brought within it by a literal construction of its terms, have been made on the *same principles*, as for example ; although the statute says, that all contracts, for the sale of land, shall be in writing. Yet defendants in equity have been and are permitted to introduce *parol evidence verifying*, or discharging such contracts, or for the purpose of avoiding them for fraud, accident, or mistake, *notwithstanding* they are for the sale of land."

We submit that parol agreements made with respect to any legal subject of contract, though not in writing, will be enforced upon proofs of part performance, on one part, and fully performed in the other part, notwithstanding the statute declared

such an agreement to be void. More especially will a court not undertake to set aside a completely performed contract, because the statute makes such agreements void. These ante-nuptial agreements are highly favored in law.

VI.

The Contract was Executed.

The contract in this cause is established by competent proofs, *clear, definite and unequivocal in all its terms.*

Now, what are the terms of the contract as averred in the bill? Briefly stated, they are: the defendant agreed with the complainant, and subsequently with complainant's mother, that if she, the mother, would withdraw her objections and the marriage take place that he would convey certain blocks of land to complainant and her children immediately after the marriage, or the proceeds thereof to purchase a home, &c., or to reinvest the proceeds until they reached a sum sufficient to purchase her a home, &c. (Record, pp. 2, 3, 4, 5.)

Mrs. Kenny testified: From these positive assurances from the defendant that my daughter would be provided with a home in own right, I withdrew my objections and consented to their marriage, for my daughter, although of age wanted my consent. (Record, p. 119.)

The real estate described therein is certain, and the contract as averred is proved by the evidence of

the complainant. (Record, pp. 127, 128, 129.) And that of Mrs. Kenny. (Record, pp. 118, 119, 120.)

This evidence is undertaken to be met by that of the defendant, Nickerson, only, which it is unnecessary particularly to refer, as the evidence of the complainant and Mrs. Kenny disprove, effectually, the defendant's denial. The complainant has clearly and unequivocally established the contract as alleged. And the contract or agreement may be established by parol evidence.

Sanford vs. *Atwood*, 44 conn. 141.
Walker vs. *Walker* 2 Atk., 98.
Measter vs. *Gillespie*, 11 Ves., 627.

It is confidently submitted, the whole evidence clearly shows, and leaves no room for rational doubt, that the promise was made as already described. And in support of the testimony of the complainant and Mrs. Kenny we have the following extract taken from one of the letters written by the defendant to the complainant, dated Nov. 7, 1881. Exhibit E. C. D. N., No. 33. (Record, p. 149)

"Mr. Gillette has sold *our* lot and a half in Portland for $7,000, leaving one yet to sell, for which he had been offered $4,200, my price being $5,000. Mrs. Williams is looklng after it, and I shall sell if she says so."

But notwithstanding the defendant's statements in his answer, not called for under oath, and irrespective of the strongest motive which has led him to deny the contract, it is again confidently submitted by the counsel for the appellant that upon

the whole evidence, it is clear that the appellee promised to give (and did give, as far as he could, without giving her a deed directly) the blocks mentioned to the appellant, and it will hardly be denied that it is reasonably certain that such was the promise, and therefore the decree passed below should be reversed.

Was this contract or express agreement solemnly entered into fully executed? We say most indubitably it was.

The fact is admitted that under and in consideration therefore, the parties were married in California on the 13th of August, 1870. (Record, p. 2.) So far therefore, as the complainant is concerned, she promptly and fully executed her part of the contract. What was done by the defendant in the way of fulfilling or executing the contract or agreement on his part? His promise was, that after the marriage, he would execute a conveyance of blocks of ground 145 and 146 to complainant and her children, or sell the same and reinvest the proceeds for a more rapid rise, so as to accomplish the purpose intended. He did perform this act, as the bill avers, that about a month after the marriage, to wit, the 17th and 19th of September, 1870, and the defendant's answer admits that blocks 145 and 146 were sold, and both complainant and defendant united in the deed of conveyance, and the proceeds arising therefrom were invested according to the agreement. This certainly was such a performance or execution of the agreement as to take the case out of the statute of frauds, if there had been any doubt about the full performance of the contract before that time. Any other construction, it is respectfully submitted, would work

a grievous fraud upon the complainant and her child, which could not be compensated for in damages.

When complainant executed the last deeds for sale while in Europe, she returned them in a letter in which she wrote to him, "imploring him to be very careful of the money the property had been sold for, and thinks it perchance, for some unexplained reason, he might not be ready to buy me the long promised home for me and mine, I begged him to put the proceeds in U. S. bonds, as the safest place for the money." (Record, p. 131.) The defendant when asked to produce letters written him by complainant, he says, he has no original letters or copies of original letters of the complainant, nor anything else that ever belonged to her in his possession. (Record, p. 75.)

Having received the money from the sales as soon as the duly executed deeds were returned, and applied the proceeds in part for the purchase of the premises in controversy, we earnestly submit that he should be held as trustee for complainant, and inasmuch as the fund has been traced into the property in question, relief ought to be granted.

Can there be a case, we respectfully submit, that appeals with stronger reasoning to a court of equity to redress wrongs than is presented in this case. The defendant has perpetrated a fraud upon the rights of the complainant, that equity will hasten to redress.

This court in *Armes* vs. *Bigelow*, 108 U. S., p. 632, discussing what performance is necessary to take the case out of the statute of frauds, say: "Whether in view of the requirements of the statute of frauds the memorandum signed by both parties was of itself sufficient to support the bill is a question, we

do not think it important to discuss, because if the memorandum is not enough, the terms of the contract have been otherwise clearly established by the evidence, and there has been full performance by Arms and substantial part performance by Bigelow."

We think the case, as made by the evidence, is well supported under the law, and in reversing the decree below and granting the relief asked by the complainant for the protection of herself and little child by this court, the law will not be lacerated.

Trusts.

VII.

Taking all the facts and circumstances in this case, as disclosed by the testimony, the agreement of the appellee, Nickerson, created an implied trust in respect to the real estate therein mentioned for the use of the appellant, and made him the trustee holding the same, or the proceeds thereof, for her benefit and their child. *Story's Eq. Jur.*, sec. 1195, *et seq.*

Under the agreement, the money, in equity, realized from the agreed sales, and passed into the hands of the appellee, still belonged to appellant.

"An agreement entered into by the husband, or wife, for the mutual settlement of their estates, or the estates of either of them, upon the marriage, even without the intervention of trustees, will be enforced in equity, though void at law." 2 Story Eq. Jur., Sect. 1370.

Perry on Trusts (sec. 208) lays down the broad and just rule on the subject of what will constitute a

trust growing out of the marriage agreement. He says: "In the negotiation of the marriage treaty, if the person making the representations have the property referred to in his hands, or under his control, a court of equity will *construe* him into a *trustee* for for such property, for the party to whom the inducements were held out, and the court will *compel* him to *execute* the trust." Citing *Hammersley* v. *DeBiel*, 12 C. & Fin., 45; *Downes* v. *Jennings*, 32 Beav., 290; *Hunt* v. *Mathews*, 1 Vern., 408; *Walford* v. *Gray*, 11 Jur. (N. S.) 106, and 8 *Id.*, 281; *Coverdale* v. *Eastwood*, L. R. 15 Eq., 122; *Saunders* v. *Cramer*, 3 Dr. & Was., 87; *Laon* v. *Fielding*, 32 Beav., 1; *Morehouse* v. *Calvin*, 15 Beav., 341; and *Story Eq. Juris.*, secs. 268 and 272.

Perry on Trusts (sec. 209) says, "these rules apply to *every kind* of fiduciary *relation*. The principle is the same in all of them." And at sec. 210 he says,

"But equity goes *even farther* than this. It not only watches over these *defined* relations of parties, but it scrutinizes the *undefined* relations of *friendly habits of intercourse and personal reliance and confidential* advice." Citing *Hunter* v. *Atkins*, 3 M. & K., 140; *James* v. *Holmes*, 8 Jur. (N. S.) 553 and 732; and *Falk* v. *Turner*, 101 Mass., 194.

Again, at page 211, Mr. Perry says:

"So property obtained by one through the fraudulent practices of a third person will be held under a constructive trust for the person defrauded, though such person receiving the benefit is innocent of collusion. If such person accept the property, he adopts the means by which it was procured; or, as Lord Chief Justice Wilmot said (Opin. 65), 'Let the hand

receiving the gift be ever so *chaste*, yet it comes through a polluted channel, the obligation of satisfaction will follow.' "

A trust once created, the trustee cannot change its character, vary its terms, or declare any new trust by a sale of the trust property and a reinvestment of the proceeds in other property. *Perry on Trusts*, sec. 86.

A promise to marry, made in good faith, like an *actual* marriage, is a valuable consideration. *Conner* v. *Stanley*, 65 Cali., 183; *Smith* v. *Allen*, 5 Allen, 458; *Wood* v. *Savage*, Walk. Ch., 471, and 3 *Paso. Cont.* 29, and 4 Kent Com. (6th Ed), 463.

Marriage is regarded as one of the strongest considerations, in law, either to raise a *use* or found a contract, *gift or grant*. 2 *Pars. Cont.*, 71; *Holden* vs. *Dickson*, Freem, 96; *Smith* vs. *Stafford*, Hob., 216; and *Waters* vs. *Howard*, 8 Gill., 262.

When persons occupy towards each other peculiar relations of trust *or confidence*, all dealings between them are *jealously watched* by a court of equity, to see that such confidence is *not betrayed*, and that *advantage* is *not* taken of the weak or ignorant. *Leonard* vs. *Barnum*, 34 Wis., 105.

In marriage it is held that parol evidence is admissible to show the transactions out of which a trust results by operation of law. *Reagan* vs. *Walker*, 1 Wis., 527; *Whitneg* vs. *Gould*, 2 Id., 552; and *Bird* vs. *Morrison*, 12 Id., 138.

A marriage, settlement providing for children considered and construed. *Douglass* vs. *McAfee*, 12 Rich., Eq. 397.

When fraud is shown, parol testimony is admissible to establish a trust, regardless of the Statute of Frauds. 21 Cali., 93, and 11 Met., 321.

Resulting trusts may be established or defeated by parol testimony. 22 Cali., 575, and *Hill on Trustees*, Sec. 91.

It is now a settled doctrine in equity, that although a parol declaration of trust will not affect land. Yet, if by the agreement, land is to be converted into money and, in pursuance thereof, is converted, a parol declaration will bind the proceeds or money. *Perry on Trusts*, Sec. 86; *Maffitt* vs. *Rynal*, 69 Pa. St., 380; *Hill on Trustees*, 58.

Although an agreement is made between husband and wife alone, the trust will devolve upon him, and be enforced in the same manner, and under the same circumstances, that it would be if he were a mere stranger. 2 *Story Eq. Jur.*, 598.

At common law, when the wife's property vests in the husband, if there be an ante-nuptial agreement stipulating that the wife may enjoy her separate property, equity bolds the husband to be her trustee, and compels him to account to her for that property. *Cotton* vs. *Cotton*, Prec. Ch., 41.

It was held in Indiana that if the husband deals improperly with funds belonging to his wife, or in which she has a special interest, he will be held to be her trustee, and required to account accordingly. *Resor* vs. *Resor*, 9 Ind., 347.

Who May Plead the Statute.

VIII.

The Statute of Frauds is a personal defense, and cannot be interposed by strangers to the agreement. Like infancy, usury, and a variety of other defences,

it can only be relied upon by the parties. *Lavenber* vs. *Hall*, 60 Ala., 214 ; *Cunningham* vs. *Potter*, 6 Pa. St. 357 ; *McConnell* vs. *Brellbart*, 17 Ills., 362 ; *Chicago Dock Co.* vs. *Kenzie*, 49 Ills., 89 ; *Bohanan* vs. *Pace*, 6 Dana, 194 ; *Sneed* vs. *Bradley*, 4 Sneed, 301 ; *Ryan* vs. *Tomlinson*, 39 Cali., 644 ; *Cowan* vs. *Adams*, 10 Me., 382 ; *Richards* vs. *Cunningham*, 10 Neb., 410, also 53 Tex., 14 ; 124 Mass. 19 ; 21 Iowa, 404.

The appellees Mathews and Carter, were not parties to the contract. They were strangers to it, according to their answers and deposition in the case.

The appellees rely on the Statuate of Frauds, a purely technical defense. In the administration of equitable jurisprudence, technicality is a bastard. It originated in the dark letter age of our own Semi-Civilized ancestors ; and has no place in the halo and shield of the light and reason which now encircles the world.

The objection to complainant to bringing this cause in her own name not having been made below, cannot now for the first time be made in this court. Although the authorities sustain the bringing of the cause by the complainant.

J. J. JOHNSON,
W. W. WILSHIRE,
Counsel for Appellant.

24-668

127-668

Supreme Court of the United States.

No. 881 October Term 1887

EMMA C. D. NICKERSON, COMPLAINANT,

vs.

AZOR H. NICKERSON, LENA DILLER CARTER, AND WILLIAM B. MATTHEWS, DEFENDANTS.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

ENOCH TOTTEN,
For Defendant Azor H. Nickerson.
HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
For Defendants Lena Diller Carter and William B. Matthews.

Judd & Detweiler, Printers.

IN THE

Supreme Court of the United States.

EMMA C. D. NICKERSON, COMPLAINANT,

vs.

AZOR H. NICKERSON, LENA DILLER CARTER, AND WILLIAM B. MATTHEWS, DEFENDANTS.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

The complainant in her bill of complaint alleges that in the spring of 1870 she engaged herself to the defendant, Azor H. Nickerson, whom she afterwards married; that *while she was so engaged*, but prior to the performance of the marriage ceremony, the said Azor H. Nickerson went with the complainant and pointed out to her certain lots of ground then owned by him in the city of Portland, in the State of Oregon, and the bill of complaint attempts to set up a pretended conversation, which the complainant claims then occurred, as constituting a parol contract or agreement under which she claims to have acquired a certain (or rather an uncertain) right, interest, title, and estate in said lots of ground; that shortly after her said marriage she united with her said husband in selling and conveying away said lots, and that subsequently different purchases and sales and

investments and reinvestments were made by said Azor H. Nickerson, and that finally he bought a certain part of lot No. 2, in square No. 114, in the city of Washington, D. C. (being No. 7 Dupont Circle).

The complainant claims that the said pretended antenuptial parol contract or agreement attached to the property last above mentioned, and that under such alleged antenuptial parol contract or agreement the property last above mentioned belonged to the complainant in equity. She further alleged that the defendants, Azor H. Nickerson, William B. Matthews, and Lena Diller Carter, formed and entered into a conspiracy to defraud complainant of her rights under said alleged contract or agreement, and that the property last above mentioned was conveyed by the vendor, not to the defendant Azor H. Nickerson, but to the defendant William B. Matthews, in trust for the said defendant, Azor H. Nickerson, and afterwards was conveyed by said Matthews to the defendant, Lena Diller Carter.

The bill also alleges that certain personal property was by bill of sale conveyed by said defendant, Azor H. Nickerson, to the said defendant, Lena Diller Carter, and that said conveyances of said real and personal property to said defendant, Lena Diller Carter, were in fraud of the rights of the complainant under said alleged antenuptial parol contract or agreement. The bill prays that said deed of realty and bill of sale of personalty to the defendant, Lena Diller Carter, be decreed null and void, and that her title be divested, and that the court will pass a decree establishing the alleged trusts in favor of the complainant under said alleged parol contract or agreement, and requiring all of the defendants to execute a conveyance to the complainant, &c.

Such is the general substance and scheme of the bill. (See the Record, pp. 2 to 12, inclusive.)

The defendant, Azor H. Nickerson, in and by his answer to the said bill, denies the allegations of the bill in the most positive and emphatic manner. (Record, pp. 26 to 36.)

He says that no such conversation occurred, and that there never was, either in writing or by parol, any contract or agreement between himself and complainant before their marriage or after their marriage; that there never was any conspiracy; that the complainant never had any right or interest in the property conveyed to the defendant, Lena Diller Carter, and that the said conveyances are legal and proper.

He sets up the laches of the complainant as a further defense against her, and also sets up the statute of frauds of Oregon, where the alleged antenuptial parol contract or agreement is pretended to have been made and where the lots first referred to were located, and the statute of frauds of the District of Columbia, where the land is situated which is now sought to be charged, as before stated. (See his answer, Record, pp. 36 to 37, and his amendment to his answer, Record, pp. 64 to 66.)

The defendants, Lena Diller Carter and William B. Matthews, also deny all the allegations of the bill from the beginning to the end and set up the complainant's laches, and also the said statute of frauds of the District of Columbia and of the State of Oregon, by their answers and the amendments to their answers. (See Record, pp. 38 to 46, for the answer of Lena Diller Carter, and Record, pp. 49 to 52, for the amendment to her answer, and see Record, pp. 52 to 60, for the

answer of William B. Matthews, and Record, pp. 62 to 64, for the amendment to his answer.)

The defendant, Azor H. Nickerson, was examined as a witness on behalf of the complainant, Emma C. D. Nickerson, and as her witness, in answer to the interrogatories-in-chief put to him (see interrogatories, Record, pp. 79 to 81), testified that said house and lot on Dupont Circle was purchased with money obtained by him in the ordinary course of business, and was derived from various speculations and business transactions of his. (See answers to interrogatories-in-chief, Record, p. 75.)

As such witness, called by the complainant, he was asked certain cross-interrogatories by the defense (Record, pp. 82 to 85, inclusive), and his answers to such cross-interrogatories are found in Record, pp. 76 to 78, inclusive, in and by which he positively and emphatically, as complainant's witness, denies the allegations of the bill, and swears that there never was any contract or agreement between him and the complainant before or after marriage, in writing or by parol. (Record, pp. 76 to 78.)

The defendant, Azor H. Nickerson, was afterwards examined as a witness on behalf of the defendants upon interrogatories-in-chief put to him by the defendants (Record, pp. 86 to 93) and cross-interrogatories put to him by complainant.

His answers as such witness for the defendants are found in Record, pp. 96 to 105, and he again positively and emphatically denies all the allegations of the bill; and, further, he testifies that he became engaged to the complainant at Dallas, Oregon, on April 21, 1879, while on a trip from Portland, Oregon, to Fort Lapwai with a party of officers and their wives; that the engagement was announced during

the trip; that complainant was 23 years of age when she engaged herself to him. Her mother was not one of the party on said trip, but was at the time in California; that nothing was said about the consent of her mother, and the engagement had existed several weeks before complainant returned to Portland, Oregon; that he was at the time a captain in the army and an aide-de-camp, his pay and allowances being between $2,000 and $3,000 a year; that complainant never had any money or property and never contributed a dollar to the support of herself or the family; that in addition to his salary he was at the time the owner of blocks 160, 145, and 146 and lots 6 and 7, in block 59, Couch's addition to the city of Portland; that blocks 145 and 146 were an old brick yard, in an undesirable locality for building purposes, on low ground near the river; that he never had any legal title to and only an equitable title and interest in lot 2, square 114 (No. 7 Dupont Circle), in Washington, D. C.

That at the time of purchase he was under orders to go to Arizona for duty, and the inconvenience of conveying the property would have been very great, with himself in Arizona and the complainant in Europe, and as he had experienced great loss of time and inconvenience in other similar matters, which he wished to avoid, he had the legal title conveyed by the vendor to William B. Matthews in trust.

That in the spring of 1880 he purchased an equity of redemption in another lot, being in lot A, in square 210, in Washington, D. C., known as 1447 Rhode Island avenue; that there was an encumbrance upon it when he bought it, which was not paid off until after he had sold his interest in it; that he sold the Rhode-Island-avenue house some time

previous to the purchase of house No. 7 Dupont Circle for a sum between $4,000 and $4,500, and that neither the purchase-money nor the money realized from the sale were ever subject to any antenuptial agreement, contract, trust, or trust fund of any kind whatsoever, and the complainant never had any interest in the same.

He says that all the taxes upon the property mentioned in the bill of complaint were paid by him from his own money; that very large amounts had to be paid and were paid by him with his own money, largely in excess of the original investment, for improvements upon the lots purchased and owned by him in Oregon; that in 1878 he had sold said Oregon lots for $4,500, and the deeds were signed by complainant and himself and sent to the purchaser, who discovered a flaw in the title, the sale fell through, and the proceedings for partition had to be gone over again before the title was perfected, and then on looking at the lots he told his agent to raise the price.

The complainant at the time, however, without objection, united with him in the execution of the deed for same at the price of $4,500; that when afterwards again sold, when she was in Dresden, the three deeds were sent to her separately, and were received and executed by her separately and at different times.

He says that after his marriage to the defendant, Lena Diller Carter, he conveyed to her certain household and kitchen furniture and personal property in Washington, D. C., and caused to be conveyed to her certain real estate in said city, and when asked why he did so he testifies that he had previously insured his life for all that he could get and assigned it to his little daughter; that his army assurance

was assigned to the complainant and his daughter, and that all the time, up to the very date of his leaving the United States, he gave the complainant, through said daughter, $150 per month—nearly three-fourths of his pay as a retired officer—and had arranged and had so advised her to continue this allowance; that when the divorce which he had procured from complainant was set aside a great wrong was perpetrated upon the said Lena Diller Carter, his wife. She was left alone, neither married nor in one sense a single woman; her mother was an aged woman, and both the latter and a sister invalids. He had before told her he thought he ought to settle the house on her, as he was speculating heavily in stocks, but she had objected, as they were just married, lest it should be supposed she had a mercenary object in marrying him; that the deeds were made out and carried to her simultaneously with her information that it was to be done, and these were his general reasons for making the transfer, aside from the considerations named in the instruments; that there was an actual money consideration, as stated in said deeds.

He denies entirely the charges of conspiracy, and also all the allegations about the alleged contract or agreement. (Record, pp. 96 to 102.)

Answering the cross-interrogatories put to him by the complainant, he states that he owned, in addition to the property already mentioned, lands in King, Thurston, Lewis, and Pierce counties, W. T.

He says that blocks 145 and 146 only brought $2,500, out of which brokers' commissions were paid, and that he could not have purchased much property anywhere with this money alone. (Record, p. 103.)

Mrs. Kenny in her testimony says, in answer to the 12th and 13th cross-interrogatories, that complainant is her daughter and is 37 years of age, and that the complainant was born July 24, 1847. (Record, p. 125.)

The complainant herself testifies that she is 37 years of age (Record, p. 126), and, in answer to cross-interrogatories put to her by the defense (Record, pp. 113 to 117), says that she was born July 24, 1847; that she engaged herself to the defendant, Azor H. Nickerson, at Dallas City, Oregon, on April 21, 1870; that she does not know to whom lots 145 and 146, in Portland, Oregon, were sold or the price; that they were unimproved; that lots 3, 4, 5, 6, 7, and 8, in block 24, in Portland, Oregon, were near the river front, at the head of Couch's lake or swamp, on low ground; that in 1878 Major Nickerson wished, if he could sell said lots for that amount, to invest $4,500 in the shares of stock in a cattle pool which he had formed in Nebraska for the purchase of a herd of Texas cattle. (Record, pp. 133 to 136.)

The testimony of the defendants, Lena Diller Carter and William B. Matthews, was taken on behalf of the defense and is found in Record, pages 151 to 165 and 165 to 182, respectively, and contradicts and denies all the allegations of the bill and supports and proves all the statements in the answers in the clearest manner, so far as they are concerned, as will be seen by reference to said testimony.

The house No. 7 Dupont Circle was paid for—$300 in cash and the balance, $8,080, by a check on Middleton & Co. (Record, p. 205). The defendant, Nickerson, as well as the vendor, Thomas Sheridan, all state in their testimony that the check was on Middleton & Co. (see Record, pp. 75 and 200), and the copy of his account at the bank of Middle-

ton & Co. (Record, p. 205) shows the same thing. Said account also shows that the defendant, Azor H. Nickerson, had been dealing largely in stocks, etc., and purchased No. 7 Dupont Circle with money derived from such source, as he and the defendant Matthews testify; and it also appears from said account that the $12,000 received by Azor H. Nickerson for the Oregon property was not deposited by him at the bank of Middleton & Co., and so no part of it could have gone into the purchase of No. 7 Dupont Circle. (Record, pp. 204 and 205.)

We have thus far referred to the facts of the case and will now consider the law applicable thereto:

1st. In the first place, the specific performance of contracts in equity is not a matter of absolute right in the party, but of sound discretion in the court, and unless the court is satisfied, beyond a reasonable doubt, of the existence of the contract, and that the application is fair, just, and reasonable in every respect, it will refuse to interfere.

Waters *vs.* Howard, 1 Md. Ch. Dec., 112; affirmed in 8 Gill, 262.

Duval *vs.* Myers, 2 Md. Ch. Dec., 401.

Every agreement, to be specifically executed, must be fair, just, reasonable, bona fide, mutual, *and certain in all its parts*, and if any of these ingredients are wanting equity will not decree a specific performance.

Stoddert *vs.* Bowie, 5 Md. Rep., 18, 28, and 30.

Such is the rule laid down by the courts everywhere and by repeated decisions in the State of Maryland.

Even if the alleged contract relied on by the complainant

had been in writing and signed, as required by the statute of frauds, still it is so uncertain in its terms that a court of equity would not attempt to enforce it. The supposed antenuptial contract, as alleged in the bill of complaint, does not show when or at what time after the marriage the defendant, Azor H. Nickerson, was to convey the property to the complainant, if at all. In the next place, if he did convey it to her, the bill states that he was also to build a house thereon for her, which would be, in this event, an additional settlement on her, while if he did not convey the property to her the bill states he was to build such house for her out of the proceeds of sale of said property or a part thereof. Besides, the supposed contract merely states that he was to erect a *suitable* dwelling-house for the benefit of herself and her children, but does not state anywhere what was to be the value of such house or how much a suitable house would be worth, nor does it state who was to decide what would be a suitable house; whether it was to be left to him, his wife, or her mother to decide what would be a suitable house and how much it would cost and be worth, nor does it state who was to decide when the property should have advanced to a value sufficient to pay for such a home.

It is submitted that a court of equity would not enforce a contract so vague and uncertain in its terms as that alleged and attempted to be proved, even if such contract were both admitted and in writing, and signed as required by the statute of frauds, which in neither respect is the case in the present suit.

2d. The pretended antenuptial contract or agreement, as alleged in the bill of complaint (Record, p. 2), and as attempted to be proved by the complainant in her testimony

(Record, pp. 127 and 128), as well as in the testimony of her mother, Mrs. Celia D. Kenny (Record, p. 118), consists of alleged conversations of the loosest character.

It is, among other reasons, probably because persons are peculiarly liable to make loose and unguarded statements at such times that the statute of frauds was passed.

But, independently of the statute of frauds, and where the statute has not been set up in defense or relied upon in any way, such loose conversations are held not to be sufficient to establish a contract or agreement between the parties.

In Lewis *vs.* Caperton, 8 Grattan, 149, the allegation was that the husband agreed to convey and did convey to his wife certain property (slaves) derived from her father's estate, and in consideration of his so doing she agreed to relinquish and did relinquish her right of dower in some of his real estate. The slaves, after being conveyed to the wife, were claimed by the husband's creditors, and the wife attempted to set up the agreement between her husband and herself and her release of dower as a consideration therefor. The proof consisted of *loose conversations* which took place when husband and wife were together—her repeated statements in the presence of various persons that she made over her right to his land because he told her he had made over to her by deed the property coming from her father's estate. So the justice of the peace by whom the privy examination of the wife was taken as to her execution of the deeds relinquishing her dower stated that at the time she executed the deeds releasing her dower, and immediately before signing them, she stated that she was induced to execute them in consideration of her husband securing to her the negroes

made over in the deeds for her. The court ruled against her claim and say:

> "The court is further of opinion that there is not sufficient evidence of any contract or agreement between Lewis and his wife to make upon her a settlement of the slaves named in the deed, &c., for the benefit of the wife, in consideration of her release of her contingent dower interest in the estate of her husband.
>
> "*The loose conversations of the parties as proven furnish no evidence of such a contract;* and though the wife, when she made such relinquishment as set forth in the deeds referred to, may have entertained the expectation that a settlement would be made, such hope and expectation cannot detract from the effect of her solemn relinquishment or entitle her, &c., to any relief against the effect thereof. * * * The deeds, &c., for the benefit of the wife are null and void as against the creditors of the husband, and cannot be regarded as valid to the extent of the value of her contingent right of dower."
>
> Lewis *vs.* Caperton, 8Grattan, 166 and 167.

In the case at bar it is further to be remembered that the complainant asks the Court to trace her pretended claims against her husband's property through repeated conveyances of his real estate, the title of which never stood in her name; she having united in the deeds and acknowledged them with the usual privy examination, and the proceeds of sale being paid to the husband without any claim on her part being made at the time or even mentioned when she was so privily examined.

In Kesner *vs.* Trigg, 98 U. S., 51, a wife inherited a certain interest in certain land from her father, and an additional

interest therein was purchased with the proceeds of slaves which she inherited from him, and afterwards she and her husband agreed to exchange it for a piece of property belonging to a third party, who was willing to make such exchange; the husband and wife accordingly conveyed away the property (which was her land and not her husband's), and she executed the deed and was privily examined. The title to the other property for which she exchanged her land was conveyed to the husband and not to the wife. The husband failed and was adjudged a bankrupt, and his assignees claimed the latter piece of land. The wife filed a bill claiming the whole of it as her property and alleging that there was an antenuptial contract between her and her husband, not reduced to writing, by which she was to claim no interest in his property and he none in hers. The court say:

> "If there were no valid contract between the appellant and her husband, as claimed, the slaves, &c., were the absolute property of the latter, &c. So, by the common law, if the husband and wife sell and convey her land, and he receives the consideration money without any reservation of rights on her part, the money belongs to him (citing authorities.)
>
> "*No question is raised as to the statute of frauds, and we need not, therefore, consider that subject.* * * * The alleged contract is thus set out in the bill. Speaking of her marriage to Kesner, the appellant says: 'It was *then agreed*, and has always since been agreed and understood, between herself and her husband that she was to take no interest in his property and he was to take no interest in hers. On their marriage they settled on a farm owned by Mr. Kesner, &c., and in pursuance of this agreement she relinquished her rights in this land.' With reference

> to the conveyance by herself and Kesner, &c., and the conveyance to Kesner, she says: 'Your oratrix, being assured this was an exchange of land, and that she would thereby acquire an interest in this land exchanged for her land, assented to it. Your oratrix never would have consented to a sale of her land for money, or to any arrangement which would have deprived her of her inheritance in her land and have her fee simple converted into a mere dower right. With this distinct understanding between her husband and herself, and, believing she would have in the Cedarville land the same rights she had in her own, she assented to this arrangement; but, being a *feme covert* and ignorant of business, she intrusted the whole management of her business to her husband.'
>
> "She claims one-half of the land free from her husband's tenancy by the courtesy, and the reversion of one-half of the residue at her husband's death."

The only proof consisted of loose conversations, and the court decreed against the claims of the wife.

Kisner *vs.* Trigg, 98 U. S., 54 and 55.

Such loose conversations being insufficient proof of a contract where the statute of frauds is not interposed, it is still clearer that when the statute is interposed they cannot possibly be considered as proof of such contract or agreement.

In Blow *vs.* Maynard, 2 Leigh, 49, the court say:

> "Lastly, the parol evidence relied on as proving the agreement does not prove it. One of the witnesses, &c., proves nothing at all to the purpose. *Another witness proves, not an agreement indeed, but a loose and vague conversation between the husband and wife, in which the husband proposed that if the wife would join in the*

conveyance of her real estate he would build her a house on a lot of his in Portsmouth, which house and lot he would convey to her. It is impossible to regard this conversation as a contract without an utter disregard of the policy and letter of the statute of frauds."

Blow *vs.* Maynard, 2 Leigh, 49 and 50.

In the case at bar the defendants—all of them—set up in defense both the statute of frauds in force in this District, where the land is situated, and also the statute of frauds of the State of Oregon, where the pretended antenuptial contract or agreement is claimed by the complainant to have been made.

The supreme court of the District of Columbia and this Court, of course, take notice of the statute of frauds in force in this District as a part of the general law of this District, and both this Court and the court below, being United States courts, would probably also take notice of the statute of frauds in force in Oregon; but whether the latter is the case or not is immaterial; for, so far as the statute of Oregon is concerned, the complainant in the case at bar has expressly STIPULATED "*that the statute of frauds in force in Oregon at the time of the transactions mentioned in the proceedings in this cause may be read from the printed volumes containing the laws of that State, and that said statutes may be so read at the hearing hereof, without further proof thereof, with the same force and effect as if the same had been regularly proven as evidence in this cause.*" (Record, p. 191.)

The statute in force in the District of Columbia is as follows:

"§ 4. No action shall be brought whereby to charge, &c., any person upon any agreement made *upon con-*

sideration of marriage, or upon any contract or sale of *lands*, tenements, hereditaments, or *any interest in or concerning them*, or upon any agreement that is not to be performed within the space of *one year* from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, *shall be in writing and signed by the party to be charged therewith*, or some other person thereunto by him lawfully authorized."

"§ 7. And, &c., that, &c., all *declarations or creations of trust and confidence* of any lands, tenements, or hereditaments *shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust*, or by his last will, in writing, or *else they shall be utterly void and of none effect.*"

29 Charles II, 2 Ch. 3, §§ 4 and 7.
Alexander's British Statutes, p. 509.

And the statute of the State of Oregon upon the subject is as follows:

"§ 771. *No estate or interest in real* property other than a lease for a term not exceeding one year, *nor any trust or power concerning such property*, can be created, transferred, or declared otherwise than by operation of law or by a *conveyance* or *other instrument in writing subscribed by the party creating, transferring, or declaring the same*, or by his lawful agent, under written authority, and executed with such formalities as are required by law."

"§ 775. In the following cases the agreement is VOID *unless the same or some note or memorandum thereof*, EXPRESSING THE CONSIDERATION, *be in writing and subscribed by the party to be charged*, or by his lawfully authorized agent; evidence, therefore, of the agreement shall not be received *other than the writing*, or

secondary evidence of its contents in the cases prescribed by law:

"1. *An agreement* that, by its terms, is *not to be performed* WITHIN A YEAR from the making thereof.

"4. *An agreement* made *upon consideration of marriage*, other than a mutual promise to marry.

"6. *An agreement* for the leasing for a longer period than one year, or *for the sale of real property* or of an *interest therein.*

"7. An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing."

Oregon Code of Procedure, 1862 (1863), pp. 190 and 191, title VIII, §§ 771 and 775.

General Laws of Oregon (1845-1864), pp. 341 and 342, title VIII, §§ 771 and 775.

General Laws of Oregon (1843-1872), pp. 264 and 265, title VIII, §§ 771 and 775.

It will be perceived that under these statutes none of the evidence on behalf of the complainant was admissible. Under the Oregon law the agreement she attempts to prove is *absolutely void*, for it attempts to create a trust in real estate; it was not to be performed *within a year;* it related to *an interest in real estate;* and, above all, it was *only* in consideration of marriage, and under the District law also no action can be brought to charge any person upon such an agreement, and such pretended trust is void.

The only pretended consideration of the pretended agreement set up by the complainant is marriage and marriage *alone.* But it is now well settled that an antenuptial parol contract in consideration of marriage is within the operation of the statute of frauds and cannot be enforced, and marriage

alone is not such a part performance of the contract as takes it out of the statute.

In Flenner *vs.* Flenner the court, in speaking of such a parol antenuptial agreement, say:

> "It is a promise made in consideration of marriage, and, not being in writing and signed by the appellant, is void under the statute of frauds, *and the celebration of the marriage is not such a part performance of the contract* as takes it out of the statute, as claimed by the appellee."
>
> Flenner *vs.* Flenner, 29 Ind., 569.

In Brown *vs.* Conger the court say:

> "It is urged by the appellant's counsel that the marriage, in pursuance of the antenuptial agreement, is such a part performance as that a court of equity will enforce the parol contract notwithstanding the statute of frauds. The counsel refers to no case which supports this proposition. Indeed, the cases, as far as I have examined them, are *all* the other way. In Fry on Specific Performance, 263, it is said marriage is not *alone* a part performance of an agreement in relation to it. *To hold this would be to overrule the statute of frauds*" (citing authorities).
>
> Brown *vs.* Conger, 15 N. Y. Supreme Court (8 Hun), 627.

In Gough *vs.* Crane the court say:

> "The circumstances relied upon to save this case from the operation of the statute is part performance, and this part performance is the marriage itself and delivery of the bonds to the husband, those being the acts of performance set up in the answer; but it is clear and incontestable that the marriage itself, *standing alone*, is no part performance within this clause

of the statute for reasons which are strongly stated in the case of Montacute *vs.* Maxwell, 1 Peere Williams, 618. In that case it will be found that the circumstances supporting the promise which was made by the intended husband to the wife to allow her to enjoy her own estate to her separate use were infinitely stronger than any which exist in this, and yet the lord chancellor held the plea of the statute good and refused to enforce the agreement."

Gough *vs.* Crane, 3 Md. Ch., 128, 129, and 132.

And on appeal the principle is also recognized by the court above that "marriage is not, *per se*, a part performance sufficient to take a parol contract out of the statute of frauds."

Crane *vs.* Gough, 4 Md., 333.

In the case of Montacute *vs.* Maxwell the plaintiff brought a bill against the defendant, her husband, setting forth that the defendant before her intermarriage with him did promise that she should enjoy all her own estate to her separate use; that he had agreed to execute writings, and that when they were to be married, the writings not being perfected, the defendant desired this might not delay the match—in regard to his friends being there—it might shame him, but engaged that upon his *honor* she should have the same advantage of the agreement as if it were in writing, drawn in form by counsel and executed; upon which the marriage took effect, and afterwards the plaintiff wrote a letter to the defendant, her husband, putting him in mind of his promise, to which the defendant, her husband, wrote her an answer under his hand, expressing *that he was always willing she should enjoy her own fortune as if sole*, and that it should be

at her command. To this bill the defendant pleaded the statute of frauds and perjuries (29 Car., 2 C., 3), by which "all promises in consideration of marriage, unless signed in writing by the party, are made void," and averred that he never signed any promise or agreement *before marriage* for her enjoying any part of her estate separately, which he pleaded in bar of any relief or discovery. It was urged against the plea that this promise was, on the plaintiff's side, executed by her intermarriage, and therefore, like the several cases in which equity did relieve and compel a mutual execution, that the letter written by the defendant, though after marriage, was an evidence under his hand of the agreement before marriage, and so took it out of the statute.

On the other side it was said that the express words of *the statute made all such promises* IN CONSIDERATION OF MARRIAGE VOID, unless they were in writing, signed by the parties, *and that there was the greatest reason for it, since in no case could there be supposed so many unguarded expressions and promises used, as in addresses in order to marriage, where many passages of gallantry usually occur*, and it was *therefore* provided by the statute that all promises made in consideration of marriage should be void unless signed by the party; *that it was very wrong to call marriage the* EXECUTION *of the promise,* WHEN UNTIL THE MARRIAGE IT WAS NOT WITHIN THE STATUTE, and the statute makes the promise in consideration of marriage void; *therefore to say that the marriage was an execution which should render the promise good was quite frustrating the statute which the court took notice of and approved.* Lord chancellor: "In cases of *fraud*, equity should relieve, even against the words of the statute, *as if one agreement in writing should be proposed and drawn and another fraud-*

ulently and secretly brought in and executed in lieu of the former, in this or such like cases of fraud equity would relieve, *but where there is no fraud, only relying upon the honor, word, or promise of the defendant*, the statute making those promises void, *equity will not interfere*, nor were the instructions given to counsel for preparing the writings material since, after they were drawn and engrossed, the parties might refuse to execute them, and as to the letter it consists only of general expressions, as 'that the estate should be at the plaintiff's command or at her service,' &c.; but as this case is circumstanced, allow the plea; also this plea, being in bar of a discovery as to all matters which if discovered and admitted might be barred by the statute, so far may the statute be pleaded in bar of such discovery."

Montacute *vs.* Maxwell, 1 Peere Williams, 618.

In the case at bar the complainant in her bill alleges as follows:

> "That this complainant, relying upon the love and affection of her said husband, the respondent, Azor H. Nickerson, and having confidence in his good faith in keeping and performing his said agreement with her, and preferring that the said property should be managed by said respondent, Azor H. Nickerson, without the complications necessarily arising from the interposition of third parties, did not require that the said lots should be conveyed to trustees for her benefit, but permitted the title to remain in the said respondent, Azor H. Nickerson." (Record, p. 3.)

The case of Montacute *vs.* Maxwell, *supra*, is directly in point. There was no fraud practiced upon her, according to her own allegations, for she says she merely relied upon the

honor of her husband. The statute is, therefore, an insuperable bar to the relief which she asks. The case last above cited is the leading one upon this point and has been followed ever since. The cases in which fraud was practiced upon the party so as to prevent the agreement from being reduced to writing and signed, as required by the statute, are inapplicable to the case at bar. The case last cited clearly draws the distinction between such cases and those like the one at bar, where the complainant *merely relied* upon the *promise* or *honor* of the party.

When *merely* the *word, promise, or honor* of the party is relied on equity never interferes if the statute is interposed.

In Lassence *vs.* Tierney, where by a parol antenuptial agreement it was agreed that the husband should take a certain portion of the wife's property, and that the residue should be settled for her separate use, this agreement was carried out so far as related to the husband, but no settlement was made on the wife. The wife subsequent to her marriage filed her bill by her next friend, stating these facts and praying that her interests in certain property, consisting of real estate coming to her, might be declared accordingly. The husband, by his answer, admitted the statements in the bill. A deed was then made, subsequent to the filing of said bill, purporting to be a settlement on the wife in pursuance of the agreement and giving her a power to dispose of her property by will. This deed was signed by the husband and by the trustee as well as by the wife, but it was not acknowledged by her. She made a will disposing of her property in favor of her husband and other parties, and died. The husband then filed a supplemental bill, praying, as against the heir of the wife, that the parol agreement might

be carried into effect; that the want of an acknowledgment might, if necessary, be supplied, and that the will of the wife might be established in favor of himself and the others claiming under the same as a valid execution of the power given to her by the deed. Held:

> "First. That in a suit thus framed there was no case established, in point of proof, as against the heir.
>
> "Secondly. That the contract so entered into before marriage, *there being nothing but marriage following*, could not be carried into effect under the statute of frauds."

The lord chancellor elaborately reviews the whole subject, and in his opinion refers to the case of Hammersley *vs.* Baron de Biel, cited by plaintiff's counsel, and says:

> "I was very glad to find that in giving judgment in that case I guarded myself, as I supposed, against such a use being made of the case, for I there said that a parol contract, followed *only* by marriage, is not to be carried into effect, *marriage being no part performance of the contract.* If it were there would be an end of the statute, which says that a contract in consideration of marriage shall not be binding unless it be in writing; *but if marriage be part performance, every parol contract followed by marriage would be binding.*"
>
> * * * * * * *
>
> "In that case I said that that case was distinguishable, because the husband, on his part, having contracted before marriage *to do something*, and, *having done it*, there was part performance of the contract, the contract relating to property to which he was entitled."
>
> Lassence *vs.* Tierney, 1 MacNaughten & Gordon, 551 and 570.

This case clearly draws the distinction between a case in which marriage, being the *only* consideration, is afterwards celebrated, and a case in which marriage *and something else to be done* were the consideration and the *latter also had been executed.* In the first case there is no part performance. In the second case, there being a further consideration in addition to the mere marriage, which had been performed, the performance of the *latter* might be considered as a part performance.

For example, had the complainant alleged that in consideration of her agreeing to marry Major Nickerson and further agreeing to convey to him certain property belonging to her he had agreed to settle some of his property on her, and that she had not only married him but had conveyed and delivered such property of hers to him, and that he had not carried out his part of the agreement, then, though the marriage would not be a part performance, yet the conveyance by her to her husband might be a part performance.

In the case at bar marriage is the *only pretended consideration* for the alleged agreement, and so all cases where there was some *additional* consideration are inapplicable to the case at bar.

In Warden *vs.* Jones all the cases are reviewed. That was a bill filed by creditors of a husband to set aside a settlement made by a husband upon a wife after their marriage. The property came from the wife. The wife and the trustees of the settlement, by their answer, resisted this on the ground that there had been a parol antenuptial agreement to settle the property, &c. The master of the rolls held and said:

> "This is a very unfortunate case, but I can only come to one conclusion upon it—I think the plaintiff (creditors) is entitled to a decree. The state of the case is this: The statute expressly states that a parol agreement made upon consideration of marriage shall not, in fact, constitute a valid agreement, and that no action shall be brought to charge any person on it."

He then reviews all the authorities, pointing out the distinction between those cases in which there was some *other* consideration *besides marriage* which had been performed and those cases in which there was *fraud* and *not a mere reliance on the word, promise, or honor* of the party, as already mentioned, on the one hand, and those like the case then under consideration and like the case at bar, in which there was *no fraud* and *no other consideration.* The court then say:

> "This case cannot be put higher than if there was a promise made by the husband to the father or agent of the wife that he would settle all her property upon her."

And, after citing numerous authorities, he goes on to say:

> "That a parol agreement, followed *only* by marriage, is not to be carried into effect, marriage being no part performance of the contract." * * * "I regret very much," &c., "that I cannot hold that this is a valid and subsisting instrument, but upon the case before me, and upon the authorities which have been cited to me, I am of opinion that the plaintiff is entitled to a declaration that the deed is void."
>
> Warden *vs.* Jones, 23 Beavans, 492.

The law on this subject is so laid down in Parsons on Contracts, vol. 1, p. 554, and notes.

Fry on Specific Performance, § 408, p. 263 [* 184], 2d Amer. ed., by Schuyler.

Roberts on Frauds, 198 and 199.

Brown on Statute of Frauds, 3d ed., §§ 439 and 440, pp. 438 and 439.

3d. It is claimed by the complainant that none of the defendants had the right to set up the statute of frauds; that Azor H. Nickerson could not do so, because, if we understand the complainant's contention, the legal title to the house No. 7 Dupont Circle is not and was not in him, and that the other defendants could not do so, because the complainant claims that no one but a party to the parol contract can set up the statute of frauds against her.

This is indeed a novel contention. We believe it has never been questioned that either a party to a parol contract or his *privies* can set up the statute of frauds against it; and the following cases will be found either to expressly state or to impliedly assume that the statute may be set up, either by the parties to the parol contract, their heirs, personal representatives, or privies.

Chicago Dock Co. *vs.* Kinzie, 49 Ill., 293.

Bohannon *vs.* Pace, 6 Dana (Ky.), 194.

Cunningham *vs.* Patton, 6 Pa. St., 358.

Ryan *vs.* Tomlinson, 39 Cal., 644 and 645.

Rickards *vs.* Cunningham, 10 Neb., 420.

In Lassence *vs.* Tierney, *supra*, the alleged antenuptial parol agreement was between the husband and the wife, and

when the husband attempted to enforce the agreement after the death of the wife the *heir-at-law* of the wife set up the statute of frauds against the agreement and his defense was sustained.

Lassence *vs.* Tierney, 1 MacNaughten & Gordon, 455.

In Warden *vs.* Jones the antenuptial parol agreement was between husband and wife, and the statute was set up by the *creditors* of the husband, and their right to do so was sustained.

Warden *vs.* Jones, 23 Beavans, 487.

And so in South Carolina the court say:

> "An *heir-at-law* is in *privity* with his answer, and so is within the protection of the statute of frauds, and may plead or insist upon it to prevent his ancestors' contract being enforced against him."
>
> Sebben *vs.* Trezevant, 3 Desaussure, 219.
>
> See also Frayne *vs.* Taylor, 33 Law Journal Eq. (U. S.), 228 and 231.

> "And so the statute of frauds may be pleaded or insisted upon by a *devisee* and will protect him (because of his privity with the ancestor) from any attempt, either by the heir or the executor or the contractee, to set up a naked, unexecuted parol agreement entered into by the ancestor relative to a part of the real estate which would otherwise pass to such devisee under the will."
>
> Sebben *vs.* Trezevant, 3 Desaussure, 219.

> "And so the *public escheator* can avail himself of the Statute of frauds to show that an oral sale of land made by him whose property is sought to be escheated was ineffectual to divest the latters' title."
>
> Sebben *vs.* Trezevant, 3 Desaussure, 217–223.

And so an executor to whom the title to land is devised for the purposes of the will, and who is given the sole and exclusive right to prosecute and defend suits, and against whom a suit is brought for the specific performance of a parol contract by the testator for the sale of such land (no devisee except the executor being a necessary party because of the terms of the will), can set up the statute of frauds, the testator having orally sold the land.

Lee *vs.* Colston, 5 T. B. Monroe (Ky.), 245

Indeed, though a party to a parol agreement which is void under the statute of frauds does not set up the statute, *those claiming under* him *may* successfully set up the statute in bar of relief sought against them.

Winn *vs.* Albert, 2 Md. Ch. Dec., 176

In that case the court say:

> "It has been remarked, and the proposition it is believed cannot be disputed, that, as against Jones, his answer to the bill of Albert *et ux.* would have concluded him, unless he had relied upon the statute of frauds, and there would have been a decree enforcing the agreement set up in the bill and confessed in the answer.
>
> "But does it follow that if these parties, Winn & Ross, claiming either under the deed of trust or as trustees in insolvency, had been parties in that cause the answer of Jones could have been read against them? * * * Jones himself, notwithstanding that answer, might have taken shelter under the provisions of the statute, and, if so, *can it be successfully argued that other parties, though claiming under him, may not avail themselves of the same protection?* The answer, if it can be read, then, is evidence, but evi-

dence of what? Why, of a parol agreement relating to land, and void by the statute of frauds. * * * My opinion, therefore, is that, even if the answer of Jones can be read, which, however, is by no means admitted, still it does not deprive the parties of the right to rely upon the statute of frauds against the claim of Mr. and Mrs. Albert, and that, consequently, the lien insisted upon cannot be maintained."

Winn *vs.* Albert, 2 Md. Ch. Dec., 176 and 177.

In the case at bar *all of the defendants have set up the statute of frauds*, and if they are not entitled to do so then there is *no person* who could possibly set up the statute.

It merely remains to say that the complainant has been guilty of such *laches* that for this reason alone she is not entitled to any relief.

Holt *vs.* Rogers, 8 Peters, 433.
Dorsey *vs.* Packwood, 12 Howard, 137 and 138.
McMillin *vs.* McMillin, 7 T. B. Mon., 567.
Strickland *vs.* Fowler, 1 Dev. & B. Eq., 631.
Nelson *vs.* Hagerstown Bk., 27 Md., 75.
Hertford *vs.* Boore, 5 Vesey Jr., 720, note *b*.

ENOCH TOTTEN,
For Defendant Azor H. Nickerson.

HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
For Defendants Lena Diller Carter and William B. Matthews.